

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

KONINKLIJKE KPN N.V., (CAUSE NO. 2:21-CV-113-JRG
)
Plaintiff, ()
vs. ()
TELEFONAKTIEBOLAGET LM ()
ERICSSON and ERICSSON, INC., ()
Defendants, (AUGUST 22, 2022
MARSHALL, TEXAS
9:00 A.M.

VOLUME 1

TRIAL ON THE MERITS
BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE
and a jury

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1 THE COURT: Good morning. Please be seated.

2 Welcome, ladies and gentlemen. It's good to see you and
3 good to have you here this morning. Thank you.

4 My name is Rodney Gilstrap, and I am the chief United
5 States District Judge for the Eastern District of Texas. I
6 have lived here in Marshall since 1981. I practiced law in
7 and around this area for 30 years before I was appointed to
8 the federal bench, and I have been on the bench here since
9 2011.

10 Now, they say confession is good for the soul so I'm
11 going to start with a confession--I was not born in Texas, but
12 I got here as quick as I could.

13 I left Florida where I was born and came to Texas to
14 attend college and then stayed and attended law school at
15 Baylor University in Waco. While I was there, I met a lady
16 from East Texas who became my wife, and we have two grown
17 children now. And my wife owns and operates a retail floral
18 business here in Marshall.

19 Now, I tell you all these things about myself because in
20 a few minutes I'm going to ask each of you to tell me similar
21 type information about you, and I think you're entitled to
22 know as much about me as I'm about to find out about each of
23 you.

24 We are about to engage in the selection of a jury in a
25 civil case involving allegations of patent infringement. But

1 if you will indulge me, first I'd like to briefly review with
2 you how we came to have our American civil jury trial system.

3 If you go back in ancient history, if you begin with the
4 first five books of the Old Testament, the Pentateuch, you
5 will find that the ancient Jewish nation impaneled juries to
6 determine issues of property ownership and property value.

7 The ancient Greeks began using a jury system about 1500
8 BC. And as they did with many other things, the ancient
9 Romans copied the jury system from the ancient Greeks. And it
10 was the Romans that brought the jury system to what we now
11 know to be Great Britain when they crossed the English channel
12 and conquered that island in the fourth century AD.

13 So from the 4th century to the 12th century, 800 years
14 went by where the jury system was introduced into,
15 established, and a part of daily life in what we know to be
16 Great Britain.

17 But in the 12th century, a rather tyrannical king came to
18 the throne of Great Britain who was King John, and King John
19 attempted to do away with the right to trial by a jury. That
20 and many other disputes between the king and his nobles led
21 that country to the verge of civil war.

22 But a civil war was avoided by means of the king and his
23 nobles entering into a comprehensive agreement that resolved
24 their disputes. That agreement was drawn up and executed at a
25 place called Runnymede, and the agreement is known as, and I'm

1 sure you've each heard it referred to as, the Magna Carta,
2 which established in writing the right to trial by jury for
3 Englishmen.

4 And so you can see that that followed the English
5 colonists who left Great Britain and came to North America,
6 and the concept and the traditional and custom of the right to
7 trial by jury crossed the Atlantic ocean with our colonial
8 American founding fathers. And, in fact, the jury system in
9 British colonial America flourished for over a hundred years
10 until another tyrannical king came to the throne of the Great
11 Britain. This time his name was King George the III.

12 And as you all know, King George ended up in many, many
13 disputes with his British colonists here in America that led
14 to the American Revolution. In fact, when Thomas Jefferson
15 sat down and wrote the Declaration of Independence, intending
16 to spell out for the king the various areas of disagreement
17 and conflict that led the colonists in America to conclude
18 they must separate from Great Britain and form their own
19 independent nation, the king's efforts to deprive his citizens
20 here of the right to trial by jury is expressly spelled out as
21 one of those grounds in the Declaration of Independence.

22 So you can see, ladies and gentlemen, that that was one
23 of many rights that our founding fathers viewed as critically
24 important. In fact, as you-all know, we did enter into a
25 revolution with Great Britain, we did form our own independent

1 nation. And some short period of time after we achieved our
2 independence, we adopted what is now the supreme law of the
3 land, the governing document for the United States of America,
4 our Constitution.

5 And our Constitution was almost immediately amended to
6 add 10 critical amendments that, but for the promise to add
7 those amendments, probably never would have been ratified in
8 the first place, and those 10 amendments you all know as the
9 Bill of Rights.

10 And among the Bill of Rights, you'll find the Seventh
11 Amendment to the U.S. Constitution which guarantees the right
12 to every American citizen to a trial by jury in a civil case.
13 And that Seventh Amendment, along with the other nine that
14 compose the Bill of Rights, were all ratified in 1791. So
15 since 1791, every American has a constitutionally-guaranteed
16 right to have their civil disputes resolved by a jury.

17 So by being here, ladies and gentlemen, and participating
18 in this process in 2022, you are doing your part to help
19 preserve, protect, and defend our Constitution, particularly
20 the Seventh Amendment guaranteeing the right to trial by a
21 jury in a civil case.

22 I always tell citizens like yourselves who appear for
23 jury duty in this court that, in my opinion, jury service is
24 the second highest form of public service that any American
25 can provide. In my personal opinion, the highest form of

1 public service are those young men and women who serve in the
2 armed forces of our country.

3 Now, when the lawyers address you today, and they will
4 shortly, they're going to ask you various questions, ladies
5 and gentlemen, and I want you to understand that they are not
6 seeking to inquire into your personal affairs unduly. Said
7 another way, they're not trying to be nosey. They are simply
8 asking questions they are entitled to ask as a part of the
9 process with the Court to secure a fair and an impartial jury
10 to hear the evidence, determine the facts, and return a
11 verdict in this case.

12 It's important for each of you to understand that if you
13 are asked a question by counsel as a part of this process this
14 morning, there are no wrong answers, ladies and gentlemen, as
15 long as the answers you give are full, complete, and truthful.

16 Now, I don't know if it will happen this morning, it
17 rarely does, but every once in a great while a question is
18 asked of somebody on a jury panel that that person views as so
19 personal and so private that they are really not comfortable
20 answering that in front of everyone else in the room. And so
21 in that case, should that arise, again I don't think it's
22 likely, but should that arise, you always have the right to
23 simply respond by saying, I'd like to talk to Judge Gilstrap
24 about that. And if that's your answer, I'll provide an
25 opportunity where you can answer that question outside of the

1 presence of everyone else on the jury panel. But, again, that
2 doesn't come up very often.

3 Now, the trial in this case -- once the jury is selected,
4 the trial in this case will begin today, and it will go -- to
5 the best of my belief, it will go through the end of this
6 week. Today is the 22nd of August and the end of this week
7 ends on the 26th. So those of you who would be selected to
8 serve on this jury are going to need to be available to serve
9 throughout the remainder of this week.

10 I want you to understand, that's my best estimate, it's
11 not a guarantee. We could finish before the end of the week,
12 we might finish a little bit beyond the end of the week, but
13 my best estimate, and I've done this a few times, is that we
14 can finish this trial by the end of this week.

15 So if there are any of you on the panel who have a
16 compelling reason why you could not be here throughout the
17 week if you were selected to serve -- and I don't mean it's
18 just inconvenient because jury service is inconvenient.
19 That's why it's public service. That's why it's a sacrifice.

20 But if, for example, you have a surgical procedure set
21 for yourself or an immediate member of your family who is
22 completely dependent upon you, if you have a reason like that,
23 then that's what I'm talking about. And if that's the case, I
24 need you to raise your hand so I can make a note of it right
25 now.

1 Okay. That's Panel Member No. 4. Anybody else? No. 11.

2 Anybody -- No. 26. Anybody else? 4, 11, 26. Anybody else?

3 Okay. Thank you, ladies and gentlemen.

4 At this time I'm going to call the case for announcements
5 on the record. Before I do, ladies and gentlemen, I want to
6 let you know that in this case the Plaintiff is a global
7 company based in the Netherlands, and the Defendant is a
8 global company based in Sweden along with its American
9 domestic subsidiary. So I'm going to do my best to pronounce
10 these Dutch and Swedish names correctly, but I won't promise
11 that they are exactly right.

12 At this time for the record, I'm going to call for
13 announcements in the case of Koninklijke KPN NV versus
14 Telefonaktiebolaget LM Ericsson, and Ericsson, Inc., their
15 U.S. subsidiary. This is Civil Case No. 2:21-CV-113.

16 And, ladies and gentlemen, you're probably going hear
17 these parties referred to throughout the case as KPN for the
18 Plaintiff and Ericsson for the two Defendants.

19 But with that, I'll ask for announcements from counsel on
20 the record, and we'll begin with the Plaintiff.

21 What says the Plaintiff in this case?

22 MR. WARD: Your Honor, Johnny Ward for KPN, and
23 we're ready.

24 THE COURT: Would you announce or identify your
25 trial team for the benefit of the jury?

1 MR. WARD: I'll do that, Your Honor.

2 First, our client representative, Ms. Lia Gerritse. She
3 is from KPN. She is our corporate representative.

4 My law partner, Claire Henry. Ms. Lexie White, Andres
5 Healy, Tamar Lusztig, Russell Rennie, and Adam Tisdall.

6 THE COURT: All right. Thank you, counsel.

7 What says the Defendants?

8 MR. BAXTER: Good morning, Your Honor. Sam Baxter
9 from McKool Smith for the Defendant.

10 Along with me, Ted Stevenson, Nick Mathews, Doug Kubehl,
11 Jeff Becker, and out in the pews, Jennifer Truelove.

12 THE COURT: All right.

13 MR. BAXTER: This is our client representative right
14 here, Mr. Delgado.

15 I'm going to get you to come up, Doug. I want you to
16 have a seat right here. We saved you a chair. Thank you,
17 sir.

18 That's who we have, Your Honor.

19 THE COURT: All right. As I mentioned to you,
20 ladies and gentlemen, this is a patent case arising under the
21 patent laws of the United States, and what the Plaintiff is
22 claiming in this case is that its patents were infringed by
23 the Defendants. The Defendants deny that they've infringed in
24 any way the patents of the Plaintiff, and they contend that
25 the Plaintiff's patents are invalid.

1 Now, what I've just told you is a very short-form,
2 high-level summary of the parties' positions in layman's
3 terms. I know you've all seen the patent video prepared by
4 the Federal Judicial Center this morning and, having seen
5 that, you more about patent cases than most citizens in East
6 Texas do.

7 As I told you, the lawyers for both sides are about to
8 question the panel and ask the questions that they believe are
9 pertinent to help secure a fair and impartial jury. Let me
10 remind you, there aren't any wrong answers as long as your
11 responses are full, complete, and truthful. And as I've told
12 you, the parties and their counsel are entitled to ask the
13 questions that they ask.

14 If for any reason an improper question is asked, I will
15 not hesitate to stop the process. But these are very
16 experienced trial lawyers on both sides, and they are
17 completely familiar with the rules of procedure and evidence.
18 I don't expect that to happen.

19 One thing I do want to call your attention to before the
20 lawyers begin with their questions because they may ask you
21 about your ability to apply this in the case if you're
22 selected to serve on the jury, and that's the burden of proof.

23 In a patent case, a jury may be called upon to apply two
24 different burdens of proof to the evidence that's presented.
25 The jury may apply a burden of proof known as the

1 preponderance of the evidence, and I'll say that again--the
2 preponderance of the evidence--as well as a different burden
3 of proof known as clear and convincing evidence--clear and
4 convincing evidence.

5 Now, when responding to lawyers' questions about the
6 burden of proof, I need to instruct you that the party who has
7 the burden of proof on any claim or defense by a preponderance
8 of the evidence means that you, the jury, must be persuaded by
9 the credible and believable evidence that that claim is more
10 probably true than not true. Let me say that again for
11 emphasis--more probably true than not true. Sometimes this
12 preponderance of the evidence is talked about as being the
13 greater weight and degree of credible testimony.

14 Let me give you an example that I hope will be helpful to
15 you. I think everybody in the jury box and in the gallery can
16 see in front of our court reporter that we have a statue in
17 the courtroom, a statue of the Lady of Justice. She's
18 blindfolded. In her right hand lowered at her side, she holds
19 the unsheathed sword of justice. In her left hand raised
20 above her, she holds the balanced and equal scales of justice.

21 Let's focus on those scales of justice for a minute.
22 They are balanced and they are equal, and that's where these
23 parties start off at the beginning of a trial--balanced and
24 equal, neither one in a better position than the other.

25 And throughout the course of the trial, the Plaintiff

1 will put its case on and present its evidence and its
2 witnesses to the jury. And think of it this way: All of that
3 evidence and all that testimony will go on one side of the
4 scales. Then when the Plaintiff's presented its evidence, the
5 Defendants will present their case to the jury, and they will
6 call their witnesses and present their exhibits. And all the
7 evidence presented by the Defendants will go on the other side
8 of the scales.

9 And when the jury's heard all the evidence, there are
10 going to be certain questions that I'm going to require the
11 jury to answer. Those questions are part of what we call the
12 verdict form. And in answering those questions, the jury is
13 going to need to decide: Has the party who has the burden of
14 proof by a preponderance of the evidence shown, by comparing
15 both side's evidence to the other, that those things are more
16 probably true than not true? If so, then the party has met
17 its burden of proof by a preponderance of the evidence. If
18 they are not more probably true than not true, then that party
19 has not met its burden of proof by a preponderance of the
20 evidence.

21 On the other hand, when a party has this second burden of
22 proof called clear and convincing evidence, that means that
23 the jury must have an abiding conviction that the truth of the
24 party's factual contentions are highly probable. I'll say
25 that again for emphasis--an abiding conviction that the truth

1 of the party's factual contentions are highly probable.
2 That's a different burden of proof than the preponderance of
3 the evidence.

4 Let's return to the same example I gave you with the Lady
5 of Justice and the balanced scales in her left hand. The
6 Plaintiff puts its evidence on one side of the scales. It
7 goes on one side of the scales. The Defendants put their
8 evidence on during this trial, it goes on the other side of
9 the scales. And the jury will be asked and will answer
10 certain questions.

11 If a question presented to the jury is presented by a
12 party who has the burden of proof by clear and convincing
13 evidence, it's not adequate that you find that it's more
14 probably true than not true; you must find that it is highly
15 probable. Again, the truth of the party's factual conditions
16 are highly probable. That's what's required to meet the
17 second burden of proof, clear and convincing evidence.

18 Sometimes the two burdens of proof are conveyed to a jury
19 like yourselves by saying that for a preponderance of the
20 evidence, the scales only need to tip ever so slightly in
21 favor of the party who has that burden of proof. And if they
22 tip ever so slightly, then that party has met the
23 preponderance of the evidence standard.

24 But for the second burden of proof, clear and convincing
25 evidence, with the Plaintiff's evidence on one sides and the

1 Defendants' on the other, those scales must tip definitely.
2 It's not adequate that they tip just ever so slightly. But if
3 they tip definitely, then the party with the burden of proof
4 by clear and convincing evidence has met that burden of proof.

5 Now, neither of these two burdens of proof, ladies and
6 gentlemen, should be confused at all with a completely
7 different and third burden of proof that I'm sure you've all
8 heard about called beyond a reasonable doubt. Beyond a
9 reasonable doubt is the burden of proof applied in a criminal
10 case, and it has no application whatsoever in a civil case
11 like this.

12 Now, I give you these instructions in case the lawyers
13 for either or both sides want to ask you about your ability to
14 apply these two burdens of proof to the evidence if you're
15 selected to serve on this jury.

16 Now, before the lawyers address you and begin with their
17 questions, I'm going to ask each of you to tell me as much
18 about each of yourselves as I told you about myself, and this
19 is how we're going to do it. We have our two court security
20 officers here in the courtroom, Ms. Denton and Mr.
21 Fitzpatrick. They both have individual hand-held microphones.

22 We're going to do this one at a time. We're going to
23 begin with Panel Member No. 1, Mr. Pitts.

24 And, Mr. Pitts, when I call on you, I'm going to ask you
25 to stand up, take one of those microphones, and answer these

1 nine questions that are on the screen. And you have printed
2 copies of them as well. Then when you're finished, if you'll
3 pass the microphone down to Panel Member No. 2, Mrs. Lacy,
4 she'll stand up, take that microphone, answer those same nine
5 questions, and we'll follow that process throughout the
6 entirety of this.

7 Also, ladies and gentlemen, once you've all answered
8 these nine set questions, if during the remainder of the jury
9 selection process one of the lawyers calls on you specifically
10 to answer a question, then you should wait until you get the
11 handheld microphone from the Court Security Officer, you
12 should stand up, and then you should answer the question.

13 This is a big room. We have a lot of people. It's very
14 important that you're heard. It's very important that our
15 court reporter hears clearly because he's going to take down
16 everything that's said throughout the entire trial process.
17 So please make sure that when you're giving any specific
18 response, either now or when you're asked a follow-up question
19 later, that you wait till you get the handheld microphone,
20 that you stand up, and then answer the question for me.
21 Please follow those instructions.

22 So with that, we will begin with Panel Member No. 1, Mr.
23 Pitts. If you'll stand and answer those nine questions for
24 us, sir.

25 THE PANEL MEMBER: Your Honor, ladies and gentlemen,

1 Your Honor, like you, I wasn't born in Texas, but I did get
2 here as soon as I could. I also arrived in 1981.

3 My name is Louis Pitts. I do live in Hughes Springs,
4 Texas. I have three children.

5 I worked for the United States Postal Service for 28
6 years. I've been retired for six.

7 My educational background, finished high school and
8 actually got a few credit hours in college, but none to speak
9 of.

10 My spouse's name is Rhonda Kay Pitts. Her -- she had
11 many jobs over the years because she was wrangling my children
12 and trying to contribute to the family at the same time, but
13 her last employment was office manager.

14 THE COURT: She's retired now?

15 THE PANEL MEMBER: Yes, sir.

16 THE COURT: Okay.

17 THE PANEL MEMBER: And my prior jury services, I was
18 on a criminal case in Linden, Texas, about 30-some years ago.

19 THE COURT: Have you ever served on a civil case?

20 THE PANEL MEMBER: No, sir.

21 THE COURT: All right. Thank you, Mr. Pitts.

22 THE PANEL MEMBER: Thank you, sir.

23 THE COURT: If you'll pass the microphone to Mrs.
24 Lacy.

25 Mrs. Lacy?

1 THE PANEL MEMBER: Hello. My name is Vickie lacy,
2 and I live in Marshall, Texas, and I have three children.

3 And I'm retired, but I worked at the parole office. And
4 I was there for 13 years.

5 THE COURT: State of Texas?

6 THE PANEL MEMBER: In the state of Texas, yes. Yes.
7 And I have a Master's degree.

8 My husband's name is Mike Lacy. He was a parole
9 supervisor, and then he was a Probation officer and retired
10 from both of them. And let's see. That was for like 12
11 years.

12 And I have never served on jury.

13 THE COURT: All right. Thank you very much, ma'am.

14 Next is Panel Member No. 3, Mr. O'Connor?

15 THE PANEL MEMBER: Good morning. My name is Timothy
16 O'Connor. I live here in Marshall, and I have two children
17 and some grandchildren.

18 I work for Blackhawk Transportation. I am medically
19 retired from the military. I've been there about two years on
20 and off. When I'm not teaching truck drivers how to drive the
21 trucks, I'm driving them. I have a Bachelor's degree.

22 My wife's name is Mary O'Connor. She is a teacher.
23 Well, she was a teacher here in Marshall, and now she is a
24 librarian, and she works for the school -- Marshall school
25 district. And she's been there a long time, working on 20

1 years now.

2 And I have never served on a jury before.

3 THE COURT: All right, sir. Thank you very much.

4 THE PANEL MEMBER: Thank you.

5 THE COURT: Next is Mrs. Wilder, Panel Member No. 4.

6 THE PANEL MEMBER: My name is Crystal Wilder. I

7 live in Bivins, Texas. I have two kids.

8 I've worked at Curtis Stout company in Shreveport for 19

9 years. I graduated high school.

10 I'm married to Jimmy Wilder. He owns Wilder Brothers

11 Construction. He's been there about 30 years.

12 And I've never been on the jury.

13 THE COURT: What does the company you work for do,

14 ma'am?

15 THE PANEL MEMBER: We're a manufacturer's rep firm.

16 I'm a quoter for high voltage equipment, SWEPCO Upshur.

17 THE COURT: Thank you. That's helpful. If you'll

18 pass the microphone to Panel Member No. 5.

19 Mrs. Collins, you're next.

20 THE PANEL MEMBER: My name is Labricha Collins. I

21 live in Atlanta. I have two children.

22 My place of employment is Texas Health and Human Service

23 Commission. I've worked there for 13 years. I have attended

24 Atlanta High School and Texarkana College in Texas A&M Texas

25 ear can a in a.

1 My spouse's name is Chris Collins, Sr. He is employed
2 with Cooper Tire Rubber Company and been there for -- the type
3 of work, he recently got a new job there, and I can't remember
4 exactly what he does, the name of it.

5 THE COURT: But he's retired?

6 THE PANEL MEMBER: He's still there. And he's been
7 there 33 years.

8 My prior jury services was a criminal case.

9 THE COURT: And where was that and how long ago?

10 THE PANEL MEMBER: It's been a very long time,
11 probably about 13, 14 years. And I thought it was in
12 Jefferson.

13 THE COURT: All right. In state court?

14 THE PANEL MEMBER: Uh-huh.

15 THE COURT: Thank you, Mrs. Collins.

16 Next is Panel Member No. 6, Mr. Stevens.

17 THE PANEL MEMBER: My name is Bobby Stevens. I'm
18 from Daingerfield. I have four kids.

19 I'm a bi-vocational pastor, pastor a church called True
20 Vine Fellowship. I'm also an accountant and controller for a
21 family business insurance company in Arkansas that I drive
22 back and forth to. Been there about nine years. Have a
23 couple of master's degrees and a Bachelor's degree.

24 My wife's name is Tonia. She's an assistant principal at
25 Daingerfield and Lone Star Independent School Districts. Just

1 started that a couple of months ago.

2 And I've not been on jury before.

3 THE COURT: When you say you work for a family
4 business insurance company, is that your family's business?

5 THE PANEL MEMBER: Yes, yes, yes.

6 THE COURT: All right. Thank you, sir.

7 No. 7 is next, Mr. Sellers.

8 THE PANEL MEMBER: My name is David Sellers, born
9 and raised here in Marshall, Texas. I have two children.

10 I have only had two jobs in my life. I owned a metal fab
11 shop for 28 years, which I sold two years ago. I am
12 unemployed now. Graduated 12th grade.

13 Wife's name is Marcy Sellers. She is the HR director for
14 Genesis Prime Care, and she's been there, I guess, 16 years
15 now or in the HR field for 16 years.

16 And I've never served before.

17 THE COURT: All right, sir. Thank you, Mr. Sellers.

18 Next we'll go around to Panel Member No. 8, Mrs. Brewer.

19 THE PANEL MEMBER: My name is Kourtney Brewer. I
20 have two kids.

21 I'm employed at Fresinius Kidney Care. I've been there
22 for eight years. I am in college now for nursing degree.

23 My spouse's name is Mark Brewer. He works as a detective
24 for Mt. Pleasant, Texas. He's been there for six years.

25 And I've never served in jury service.

1 THE COURT: And where are you in school for a
2 nursing degree?

3 THE PANEL MEMBER: NTCC, Mt. Pleasant. North Texas
4 Community College.

5 THE COURT: Thank you, ma'am.

6 All right. Next is No. 9, Mrs. Dunagan?

7 THE PANEL MEMBER: Yes. My name is Emily Dunagan.
8 I live in Hallsville, Texas. I have two children.

9 My place of employment is the Hallsville Independent
10 School District. I am a dyslexia specialist. I have been
11 there for 20 years. I have a Bachelor's degree in education
12 from East Texas Baptist University.

13 My spouse's name is Joey Dunagan. He was employed for
14 the city of Marshall. He retired from the fire department.
15 He was a fireman/paramedic and also served as the fire marshal
16 for several years. He now works for Eastman Chemical Plant.
17 He has been there for -- let me think -- about a year and a
18 half at Eastman Chemical Plant. He worked in Marshall for 21
19 years.

20 And now I have served on a chemical -- on a criminal case
21 for the district court here in Harrison County.

22 THE COURT: All right. But not this courthouse.
23 The state courthouse?

24 THE PANEL MEMBER: Yes.

25 THE COURT: How long ago was that, ma'am?

1 THE PANEL MEMBER: Probably about eight years ago.

2 THE COURT: And that's the only time you served on a
3 jury?

4 THE PANEL MEMBER: Yes. And I was the alternate. I
5 should say that.

6 THE COURT: Okay. Thank you, Mrs. Dunagan.

7 Next is No. 10, Mr. McCoy?

8 THE PANEL MEMBER: Yes. My name is Bret McCoy. I
9 have four children, ranging in ages from 11 to 6.

10 I'm a financial advisor with Edward Jones. I've been
11 doing that for 15 years. I hold a bachelor's and Master's
12 degree.

13 My wife's name is Elizabeth. She is a schoolteacher for
14 Pewitt ISD, fifth year at that district, 20th year teaching
15 for her.

16 And I've never served on a jury.

17 THE COURT: Which school district does she teach in?

18 THE PANEL MEMBER: Pewitt.

19 THE COURT: All right, sir. Thank you very much.

20 Next is No. 11, Mrs. Shields?

21 THE PANEL MEMBER: My name is Madison Shields, and I
22 live here in Marshall, Texas. I have three children.

23 I currently stay home and help my husband with his
24 business, and I've done that for five years now. I completed
25 high school.

1 My husband's name is Casey shields. And he has -- he
2 owns a mobile home moving company which he's worked at for 25
3 years total but owned for five years, the last five years.

4 And I've never served on a jury.

5 THE COURT: And how do you help him with his
6 business?

7 THE PANEL MEMBER: Answering the phone.

8 THE COURT: Working the office?

9 THE PANEL MEMBER: Whatever he tells me to do.

10 THE COURT: All right. Thank you, Mrs. Shields.
11 Next is No. 12, Mrs. Thomas?

12 THE PANEL MEMBER: Okay. My name is Shirley Thomas.
13 I have three kids, three grandkids.

14 I work for the city of Marshall. I've been there three
15 years. High school diploma.

16 My spouse's name is Robert Thomas. He works for Nover
17 Compact. He's a mobile mechanic.

18 THE COURT: And what do you do for the city of
19 Marshall, ma'am?

20 THE PANEL MEMBER: Whatever. I work just two levels
21 down at Moore City Hall.

22 THE PANEL MEMBER: Okay.

23 THE PANEL MEMBER: And he's been at this new job
24 because it changed over like a year and a half.

25 And then I've did civil and criminal.

1 THE COURT: You've been on both a civil case and a
2 criminal case?

3 THE PANEL MEMBER: In Jefferson.

4 THE COURT: Okay. How long ago were you involved in
5 the jury trial in a civil case?

6 THE PANEL MEMBER: Oh, a long time.

7 THE COURT: Hold the microphone a little closer.

8 THE PANEL MEMBER: Oh. Over 10 years.

9 THE COURT: Okay. Thank you, ma'am.

10 All right. Next is No. 13, Mrs. Morrow?

11 THE PANEL MEMBER: Good morning.

12 THE COURT: Good morning.

13 THE PANEL MEMBER: My name is Gail Morrow. I stay
14 here in Marshall, Texas. I have one grown daughter.

15 I work for the city of Marshall, the library, been there
16 21 years. I'm a cataloger. And I have a high school diploma
17 and some college classes.

18 My husband's name is Ernest Morrow, works for Texas
19 Eastman, lab tech, been there 24 years, and also a sergeant
20 major in the military for 33.

21 And I have served in a civil case over 10 years ago.

22 THE COURT: And where was that, ma'am?

23 THE PANEL MEMBER: Over at the courthouse.

24 THE COURT: At the Harrison County courthouse?

25 THE PANEL MEMBER: The Harrison courthouse.

1 THE COURT: Thank you, ma'am.

2 All right. Next is No. 14, Mr. Henderson?

3 THE PANEL MEMBER: Hello. My name is Anthony
4 Henderson. I'm a Baptist preacher in Linden, Texas. I live
5 in Jefferson, Texas. I have three kids.

6 I'm employed by Jefferson ISD. I'm a mechanic at
7 Jefferson ISD. I've been working there for six years. I have
8 my associate degree and my Bachelor degree in theology.

9 I'm not married, and I've never served on a criminal or
10 civil case.

11 THE COURT: Never served on a jury of any kind?

12 THE PANEL MEMBER: No, sir.

13 THE COURT: Thank you.

14 All right. Next is No. 15, Mr. Hogue?

15 THE PANEL MEMBER: My name is Chris Hogue. I live
16 in Omaha, Texas. I have two children.

17 I work for Graphic Packaging International. I do
18 maintenance work.

19 THE COURT: Mr. Hogue, would you mind holding the
20 microphone a little closer so I can hear you?

21 THE PANEL MEMBER: I work for Graphic Packaging
22 International. I do maintenance-type work. I've been there
23 seven years. I got a high school education.

24 My wife's name is Kim Hogue. She's a substitute teacher
25 at Paul Pewitt ISD. She's been there a couple of years.

1 And I've never served before.

2 THE COURT: All right. Thank you, sir.

3 Next is No. 16, Mr. Youngblood?

4 THE PANEL MEMBER: My name is Randall Youngblood. I
5 live in Waskom. No children.

6 I'm a retired educator, 38 years as a teacher, coach, and
7 principal. I have a master's in school administration.

8 Never married, and no jury experience.

9 THE COURT: Was your educational career at Waskom
10 ISD or other places?

11 THE PANEL MEMBER: I've worked at four different
12 school districts in my 38 years, but retired from Waskom.

13 THE COURT: And how many years did you work in the
14 Waskom --

15 THE PANEL MEMBER: 21.

16 THE COURT: Thank you very much, Mr. Youngblood.

17 Next is No. 17, Mr. Adams.

18 THE PANEL MEMBER: My name is Cliff Adams. I live
19 in Big Sandy, Texas, have two children.

20 Worked for TXU for a little over 34 and a half years
21 as -- and I'm retired now -- as an instrumentation technician
22 supervisor before I retired. I have an Associate's degree in
23 instrumentation technology.

24 Spouse's name is Cindy Adams, and she worked for Good
25 Shepherd Christus, Good Shepherd, for about 22 and a half

1 years.

2 And I have served on a criminal case in Russ County,
3 Henderson, Texas, about -- about 30 years ago.

4 THE COURT: Ever served on a civil jury?

5 THE PANEL MEMBER: No, sir.

6 THE COURT: Okay. Thank you, Mr. Adams.

7 Next is Panel Member No. 18.

8 THE PANEL MEMBER: My name is Rhonda Saintignan. I
9 live in Jefferson, Texas. I have two children.

10 I now work at Fort Jefferson Outpost. Before that, I
11 worked 19 years at Blue Cross Blue Shield. I have been at the
12 Outpost for going on three years. Graduated from Marshall
13 High.

14 My husband's name is Ronnie Saintignan. He worked at
15 Delta Fab before he retired. He was there for about six
16 years. He was the quality control, QC, manager there. And
17 prior to that, he worked at MasterCraft and Republic for many
18 years there.

19 And I worked on a criminal case in Marion County.

20 THE COURT: How long ago, ma'am?

21 THE PANEL MEMBER: Five years ago probably, four or
22 five.

23 THE COURT: Never on a civil case?

24 THE PANEL MEMBER: Un-huh.

25 THE COURT: Thank you.

1 All right. Next is Panel Member No. 19, Mrs. Mashaw.

2 THE PANEL MEMBER: My name is Shelly Mashaw. I live
3 in Hughes Springs. I have one five-year-old son.

4 I'm a stay-at-home mom, but I hold a degree, an associate
5 degree, and a state license for physical therapist assistant.
6 And I also kind of did just a little bit of what we call
7 outflowing for a medical staffing company where I searched
8 through medical resumes for job positions, kind of do that on
9 an as-needed business for a friend's company. I was a
10 physical therapist assistant for 12 years before I became a
11 stay-at-home mom.

12 And let's see. My husband's name is Morgan, and he is an
13 ID tech for Midcoast Energy, been in the oil and gas company
14 business for 20 years, but he's been with Midcoast for about
15 five.

16 And I've -- this is my first jury experience.

17 THE COURT: All right. Thank you very much, Mrs.
18 Mashaw.

19 Next is No. 20, Mrs. Younger?

20 THE PANEL MEMBER: Good morning. My name is Nancy
21 Younger, and I do live here in Marshall. I have two grown
22 sons.

23 My place of employment, I'm a supervisor with a
24 personalized auto insurance group. I've worked there for 34
25 years now. And my education, I graduated from Marshall High

1 School.

2 My husband's name is Aaron Younger, Jr., and he was a
3 captain with the fire department here in Marshall, and he has
4 retired for 15 years.

5 And I have served on a criminal case here at the Harrison
6 County courthouse.

7 THE COURT: That's the only jury service you've had?

8 THE PANEL MEMBER: That's it.

9 THE COURT: And what's the name of the insurance
10 group you work for?

11 THE PANEL MEMBER: I work for Lewis Williams and
12 Associates here in Marshall.

13 THE COURT: Thank you, ma'am.

14 THE PANEL MEMBER: Yes, sir.

15 THE COURT: All right. Next is No. 21, Mr. Whitlow.

16 THE PANEL MEMBER: Thomas Whitlow. Lived here all
17 my life. No children.

18 Retired from an oil field service company in 2014. Last
19 time I worked there was about 20 years. I graduated from East
20 Texas State University, which is no more. It's now Texas
21 A&M-Commerce.

22 My wife's name is Faye. She worked for the school
23 district. She's a math teacher for a long time.

24 No jury service.

25 THE COURT: Mrs. Whitlow's retired now?

1 THE PANEL MEMBER: Yes.

2 THE COURT: Okay. Thank you, sir.

3 THE PANEL MEMBER: My name is Donovan Pleban. I
4 live here in Marshall, Texas. I do not have a spouse or kids.

5 I work at the local Cash Saver, formerly Save-a-Lot.

6 I've worked there almost four years. I have an Associate's
7 degree in software engineering from TSTC here in Marshall,
8 Texas.

9 I technically do not have any jury services, but many
10 years ago, I don't know exactly where, I was part of a social
11 experiment that was a mock trial. And it also was a patent
12 dispute within the mock trial, although they weren't as formal
13 as here.

14 THE COURT: But you've never been on a jury in a
15 court, either state or federal?

16 THE PANEL MEMBER: No, no, no, not at all.

17 THE COURT: All right. Thank you, sir.

18 Next is No. 23?

19 THE PANEL MEMBER: Good morning. My name is Nick
20 Emerine. I live here in Hallsville, Texas. I have one son.

21 I work for West Lake Chemical Corporation, and I work as
22 a process engineer. I've worked there for about a total of
23 nine years. I have a Bachelor of Science in chemical
24 engineering.

25 My spouse's name is Stephanie Emerine. She works for

1 Hallsville ISD, and she's a teacher. And she's worked there
2 for a total of five years.

3 And I've never served as a jury member.

4 THE COURT: Thank you, sir.

5 Next is No. 24, Mr. Franklin.

6 THE PANEL MEMBER: My name is Byron Franklin. I
7 live in Daingerfield, Texas. I have two children.

8 I work at the Morris County Sheriff's Department. I've
9 been there 12 years. High school diploma.

10 No spouse, and I never served.

11 THE COURT: And what do you do at the sheriff's
12 office there?

13 THE PANEL MEMBER: I'm a jailer.

14 THE COURT: All right, sir. Thank you very much.

15 Next is No. 25, Mrs. Welch?

16 THE PANEL MEMBER: Hi. My name is Sally Welch. I
17 live near Linden. I have two children.

18 And I'm retired. I've worked at various places. The
19 last one I worked at is Capital One bank. I was a contractor
20 to a contractor at Capital One bank. I worked for IM, which
21 was a contractor. I worked there four or five years.

22 THE COURT: And what did you actually do when you
23 were working at the bank?

24 THE PANEL MEMBER: It was a data center for Capital
25 One Bank. So I worked with the servers, physical, and also

1 administrative work with the servers.

2 THE COURT: Thank you.

3 THE PANEL MEMBER: I have a Bachelor's degree.

4 My husband's name is Walter Welch. He worked for 30
5 years for the state of Texas at Texas A&M University and also
6 at the University of Texas at Dallas. He's an
7 electrical -- he retired as a foreman for the electrical shop.
8 Well, he worked at UTD probably about 11 years, something like
9 that.

10 THE COURT: All right.

11 THE PANEL MEMBER: Prior jury service, I was on a
12 civil trial, DWI.

13 THE COURT: Whereabouts?

14 THE PANEL MEMBER: That was in McKinney, Texas.

15 THE COURT: And how long ago?

16 THE PANEL MEMBER: Fifteen years.

17 THE COURT: You say it was a civil case involving a
18 DWI? DWI is a criminal charge. Was it a criminal case or
19 civil case?

20 THE PANEL MEMBER: I was pretty sure it was civil.
21 I guess it was criminal.

22 THE COURT: It's been a long time ago?

23 THE PANEL MEMBER: It's been a while. We were hung
24 anyway. We just could not come to a verdict.

25 THE COURT: All right. Thank you, Mrs. Welch.

1 Next is No. 26, Ms. Clark?

2 THE PANEL MEMBER: Hi. My name is Brandi Clark.
3 I'm originally from south Louisiana. I just moved here about
4 10 years ago. I have two girls, one of which has my
5 granddaughter who I raise. She just turned three.

6 My employment is I work for Dollar General. I just
7 started that back in April, I believe. I'm a key holder. I
8 open and close the store on my own. The highest education is
9 high school.

10 I'm currently going through a divorce, and I have no
11 prior jury services.

12 THE COURT: Where is the Dollar Store that you work
13 at, ma'am?

14 THE PANEL MEMBER: Harleton, Texas.

15 THE COURT: Harleton. Thank you.

16 Next is No. 27, Mrs. Autry?

17 THE PANEL MEMBER: My name is Cheyanne Autry. I'm
18 from Queen City, Texas. I have two young children.

19 I'm a family nurse practitioner at Genesis Prime Care in
20 Texarkana. I've been there about two -- two weeks. So been a
21 registered nurse for seven years, though.

22 My spouse's name is Douglas Autry. He works for A E P
23 sip toe and he's a supervisor over the lineman crew there.
24 And he's been there for 10, 12 years, somewhere through there.

25 And I've never served on a jury before.

1 THE COURT: Thank you, ma'am.

2 Next is No. 28, Miss Crawford?

3 THE PANEL MEMBER: Good morning. My name is Demisha
4 Crawford. I live in Karnack, Texas. I have one child.

5 I work at the Harrison County Courthouse with Judge
6 Clarice Watkins, Precinct 2. I am the civil/criminal case
7 manager. I have been there for 13 years. I have a high
8 school diploma. I hold a Master's degree in criminal justice.

9 6, 7, and 8 does not apply to me because I do not have a
10 spouse. And, no, I do not have prior jury services.

11 THE COURT: Okay. Thank you, Miss Crawford.

12 Next is No. 29, Mr. Grundy.

13 THE PANEL MEMBER: Good morning. My name is Willie
14 Grundy. I live in Domino, Texas. I have four kids.

15 I worked for International Paper in Domino for 24 years
16 before they sold out in 2018 to Graphic Packaging. I've been
17 there a total of 28 years. I retired last Saturday, this past
18 Saturday.

19 And I am not married. And I served on a criminal case in
20 Cass County, Linden, Texas.

21 THE COURT: How long ago was that, sir?

22 THE PANEL MEMBER: That was over 11 years ago.

23 THE COURT: Never served on a civil case?

24 THE PANEL MEMBER: No, sir.

25 THE COURT: Thank you, Mr. Grundy.

1 Next is Panel Member No. 30?

2 THE PANEL MEMBER: Yes. I'm Ed Raney. I'm a poor
3 dirt farmer from West Texas. My wife is from east Texas. We
4 have two children and five grandchildren.

5 I have an Associate's degree in computer science, a
6 Bachelor's degree in computer science, and a master's in
7 business administration.

8 My wife was a cancer registrar, and she's now retired.

9 I worked in the computer field for over about 40 years
10 and have extensive work with IT and tech support, both in
11 computers and the telecommunications. So I've been associated
12 with the Ericsson and KPN products and services as well.

13 THE COURT: Are you employed now, sir?

14 THE PANEL MEMBER: Yes. I'm still working with a
15 company out of Hawaii. We actually went to Hawaii for about
16 10 years, and I'm still a computer consultant with them.

17 THE COURT: What's the name of that company, sir?

18 THE PANEL MEMBER: It's High Performance Systems
19 there in Hawaii. They work mainly with Microsoft products.

20 THE COURT: Okay.

21 THE PANEL MEMBER: And I have a small company called
22 Raney Electronics, and we developed a drug controller system
23 and went through some of the patent process with that under a
24 federal grant.

25 THE COURT: Does your wife work anywhere right now?

1 Does your wife work outside the home right now?

2 THE PANEL MEMBER: No. She's currently retired and
3 finally got on Medicare.

4 THE COURT: And have you had any prior jury service?

5 THE PANEL MEMBER: Yes. I've served on a criminal
6 jury in Pittsburg, Texas.

7 THE COURT: How long ago was that?

8 THE PANEL MEMBER: One-to-two years.

9 THE COURT: All right. You've never served in a
10 civil case?

11 THE PANEL MEMBER: No, I have not.

12 THE COURT: Okay. Thank you very much, sir.

13 THE PANEL MEMBER: Thank you.

14 THE COURT: Next is No. 31, Mrs. Steward.

15 THE WITNESS: My name is Laurie Steward. I am from
16 Linden, Texas. I have two children.

17 I am a retired fourth grade teacher from Hughes Springs
18 ISD. I have -- worked there or was an educator for 25 years.
19 I have a Bachelor's degree.

20 My spouse's name is Keith Steward. He works for Wilkes
21 Power Plant in Avenger, Texas, as a senior operator. He's
22 been there about 10 years.

23 And I have served on a civil jury before.

24 THE COURT: And where was that?

25 THE PANEL MEMBER: Here.

1 THE COURT: In this court?

2 THE PANEL MEMBER: Yes, sir.

3 THE COURT: And how long ago?

4 THE PANEL MEMBER: About nine years.

5 THE COURT: And do you remember what the case was
6 about?

7 THE PANEL MEMBER: Yes, sir.

8 THE COURT: What was it about?

9 THE PANEL MEMBER: It was rentals --

10 THE COURT: Was it a patent case?

11 THE PANEL MEMBER: Yes, sir.

12 THE COURT: Okay. And did the jury return a verdict
13 for the plaintiff or for the defendant or do you remember?

14 THE PANEL MEMBER: For the defendant.

15 THE COURT: Okay. Thank you very much, ma'am.

16 All right. Next is No. 32, Mr. Bynum?

17 THE PANEL MEMBER: My name is Thomas Bynum. I live
18 here in Marshall. I've got six grown daughters.

19 I was a maintenance manager for Novak Drilling Patterson
20 UTI. Retired. I've got an Associate degree.

21 My wife is deceased. Her name was Janie.

22 And I served on a criminal case about 10 years ago.
23 Settled before we went to trial.

24 THE COURT: Never served in a civil case?

25 THE PANEL MEMBER: No, sir.

1 THE COURT: Thank you, Mr. Bynum.

2 And next is Mr. Robison.

3 THE PANEL MEMBER: Wayne Keith Robison. I am from
4 Marshall, Texas. I have three kids.

5 I'm currently the owner of Maintenance Furniture Company
6 in Longview, Lakeside Classic Car and Motorcycle Sales in Ore
7 City, and a partner the Deuce Custom Creations Motorcycle ATV
8 Repair in Ore City. Those last two for the last two years.
9 I've owned Maintenance Furniture since 2006. High school
10 graduate, 12 years in the Navy in communications.

11 My wife's name is Kathy. Currently she's on disability.
12 She was a nurse by training.

13 And I was on a civil case in Gray County about 10 years
14 ago.

15 THE COURT: That's the only jury service you've had
16 before, sir?

17 THE PANEL MEMBER: Yes, sir.

18 THE COURT: Thank you very much.

19 All right, ladies and gentlemen. Thank you very much for
20 that information.

21 Now, I need to say just a couple of additional things to
22 you before I turn the questioning over to the lawyers.

23 The jurors that are selected to serve in this case will
24 serve in the role as the judges of the facts, and the jurors
25 selected will make the sole determination about what the facts

1 are in this case.

2 Now, my job as the judge is to rule on questions of law,
3 evidence, and procedure, to maintain the decorum of the
4 courtroom, and to oversee hopefully an efficient flow of the
5 evidence over the course of the trial.

6 Also, I want to say a couple of things to you about our
7 judicial system that I hope will put things in a proper
8 perspective for you. In any jury trial, besides the parties
9 themselves, there are always three participants--the jury, the
10 judge, and the lawyers.

11 With regard to the lawyers, I think it's important for
12 each of you to understand that our judicial system is an
13 adversary system, which simply means that during the trial
14 each of the parties will seek to present their respective
15 cases to the jury through their counsel in the best light
16 possible.

17 Now, it's no surprise to any of you that lawyers are
18 sometimes criticized in the public and in the media, but the
19 Court's observed that at least some portion of that criticism
20 results from a basic misunderstanding of our adversary system
21 in which the lawyers act as advocates for the competing
22 parties, and as an advocate, a lawyer is ethically and legally
23 obligated to zealously assert his or her client's position
24 under the rules of our adversary system. And by presenting
25 the best case possible on behalf of their clients, the lawyers

1 hopefully will enable the jury to better weigh the relevant
2 evidence to determine the truth and arrive at a just verdict
3 based on that evidence.

4 This system, this adversary system of justice, has served
5 our country well for over 200 years, and America's lawyers
6 have been and are now and will in the future continue to be an
7 indispensable part of this process.

8 So as we go forward with the trial, even though it's
9 possible the jury may see me frown or roll my eyes at the
10 lawyers from time to time, it's simply because I'm trying to
11 make sure that they don't get outside the boundaries of our
12 adversary system. But please keep in mind that they are just
13 doing their jobs, and it's important for all of you to
14 understand that as we go forward.

15 Also, ladies and gentlemen, for those of you selected to
16 serve on the jury in this case, I am going to do my very best
17 throughout the trial to make sure that the jury has no idea
18 about what I think about the evidence that's presented,
19 because it is the jury's job to determine the facts based on
20 the evidence and that is not my job.

21 So those of you selected on the jury should not take any
22 expressions or comments that you see or hear from me or you
23 think you hear from me as something to consider in making the
24 ultimate decision about what the facts are in this case.

25 With that, ladies and gentlemen, the lawyers for both

1 sides, the competing parties, will address you at this time.

2 Mr. Ward, you may address the panel on behalf of the
3 Plaintiff.

4 MR. WARD: Thank you, Your Honor.

5 THE COURT: Would you like a warning on your time,
6 counsel?

7 MR. WARD: I would, Your Honor. If I could have a
8 five-minute warning.

9 THE COURT: I will warn you when you have five
10 minutes remaining. Please proceed.

11 MR. WARD: Thank you, Your Honor.

12 Good morning again. My name is Johnny Ward, and I
13 represent KPN. I'm not even going to try to do the
14 pronunciation that His Honor did.

15 You-all have told us a little bit about yourselves. I'm
16 going to tell you briefly about myself so you know who I am.
17 I was born and raised in Longview. I've been practicing law
18 there for about 25 years. I'm married.

19 My wife's name is Nell. She was a schoolteacher. We've
20 got three kids who are all out of the house now. She taught
21 school for four or five years, then retired to chase kids, and
22 then went back after about 20 years and got cured of that
23 after about two years.

24 My hobby, I like to duck hunt. I've got no prior jury
25 service, but I've stood up in front of juries many times.

1 Let me first start off by telling you a little bit about
2 voir dire. I'm going to tell you briefly about the case, a
3 real high-level overview, and then I'm going to ask you some
4 questions. And some of you might think, well, if I don't
5 raise my hand, if I don't answer anything, then maybe I won't
6 get called upon.

7 Those in the jury box, and I'll refer to you as the jury
8 box, I can tell you I'm going to talk to every one of you or
9 try to. And those in the first two rows of the gallery, I'm
10 going to try to talk to you as well. The third and fourth
11 rows back there are probably pretty safe from making it on
12 this jury panel. You-all are at risk, so be aware I'm going
13 to call on and talk to you.

14 You were kind enough to fill out those jury
15 questionnaires, and they gave us a lot of information. And
16 that's really what I'm going to follow up on and maybe some of
17 the things that you've said this morning in response to the
18 information that His Honor asked you to provide us.

19 Let me ask you this first question. Who all, when you
20 found out you got the jury summons and you were coming to
21 court and you now know you're going to sit in judgment of a
22 dispute between two companies, how many of you want to be fair
23 to both sides? Okay.

24 Is there anybody who came in and said, I don't want to be
25 fair? All right. We chuckle.

1 In March, I picked a jury, and a guy raised his hand, he
2 said, "I don't want to be fair."

3 And I said, "Why don't you want to be fair?"

4 He said, "Whoever filed this lawsuit, I'm mad at and it's
5 their fault."

6 So I ask that kind of in jest, but I got an answer to
7 that. So nobody sitting in the jury box is sitting I'm angry,
8 KPN filed this lawsuit, and that's why I'm here.

9 Anybody feel that way before we get started jury box and
10 gallery? All right.

11 Because can we all agree that we have different life
12 experiences? Right? Things that might affect our ability to
13 be fair because of the nature of the case? And I see Mr.
14 McCoy, Juror No. 10.

15 Mr. McCoy, you and I met before in this courtroom, I
16 think. You were on a jury panel, and I think in that case you
17 owned stock in one of the companies, didn't you?

18 THE PANEL MEMBER: Verizon.

19 MR. WARD: Verizon. That's right. So you couldn't
20 be on that panel because Verizon was a defendant. Right?

21 THE PANEL MEMBER: Yes, sir.

22 THE COURT: Would you mind standing up, sir?

23 THE WITNESS: I apologize.

24 MR. WARD: No problem. That's something that had
25 nothing to do with the facts of the case, but it might cause

1 you to lean one way or another. Right?

2 THE PANEL MEMBER: It could.

3 MR. WARD: Okay. Thank you. I'll tell you what,
4 while I've got you, do you own stock in Ericsson?

5 THE WITNESS: I wish I did.

6 MR. WARD: You don't?

7 THE PANEL MEMBER: Do not.

8 MR. WARD: That's an example of something that
9 doesn't have anything to do with the case, but it might start
10 you leaning one way or the other before you hear the evidence.
11 And that's all I want to find out.

12 Leaning does not disqualify you. You can lean one way or
13 the other, and you've just got to tell us about it. What
14 would disqualify you is if you lean to such an extent that you
15 couldn't decide the case based upon the facts and the law that
16 Judge Gilstrap gives you. All right.

17 So that's what we're trying to find out. Leaning is
18 okay; it doesn't disqualify you.

19 Let me talk to you briefly about the case. The case is
20 about these three patents. This is a copy of the patents.
21 Those of you who make it on the jury will have copies of these
22 patents in the jury notebook. It's the '637, '235, and '089.
23 It doesn't mean anything to you right now, but those of you
24 that make it on the panel are going to hear those numbers a
25 whole lot.

1 I know that many of you had heard of Ericsson. One of
2 the jurors I think said he'd heard of Ericsson. They are a
3 well-known manufacturer of cell phone infrastructure
4 technology, the base station antennas and the hardware and all
5 the guts that kind of go into our cellular networks. And they
6 sell those to telecommunications providers like Verizon, AT&T,
7 and T-Mobile are companies I know you're familiar with.

8 KPN is also a telecommunications provider but only in the
9 Netherlands. I don't think anyone had heard of KPN, and I'm
10 not surprised. I had not, either, before I got hired by them.
11 But they've got about 4 million customers, 20,000 employees,
12 but they only do business in the Netherlands. But they have
13 patents around the world that protect their inventions, and
14 they are the owner of these U.S. patents. They've got about
15 1500 worldwide patents and 200 U.S. patents.

16 They say that Ericsson is using the inventions, is using
17 the inventions in these patents without permission. Ericsson
18 says, we don't use those patents, we're not on your property.
19 And, in fact, they say one of the patents is invalid. They
20 also dispute how much money they owe. We say they owe us over
21 \$30 million. They say not nearly that much if they are on our
22 property and the patents are valid.

23 And that's all I'm going to tell you about the facts.
24 And you-all might say, well, that's not a very convincing
25 argument, Mr. Ward, for why you should win.

1 Well, despite how strongly I believe in our positions,
2 this is not the time for me to argue to you. I'd get in
3 trouble, and, plus, I don't want to affect how you view this
4 case before I find out if there's things in your life that
5 might affect your ability to be a fair and impartial juror in
6 this case.

7 So let me start. My first question is, does anyone know
8 Mr. Sam Baxter.

9 Mr. Baxter, would you mind standing up.

10 Mr. Baxter is a lawyer here in Marshall.

11 Thank you, Mr. Baxter.

12 And one of his partners, Ms. Jennifer Truelove, is also
13 here.

14 I want to know if anybody in the jury box -- and I'm
15 going to come to the first and second rows in just a second.
16 Thank you -- in the jury box knows Mr. Baxter. When I say
17 know, it could be it's the broadest sense of the word, I
18 recognize him or maybe I've been on a local organizations
19 board, something like that. If you know Mr. Baxter or Ms.
20 Truelove or their law firm of McKool Smith and you're in the
21 jury box, would you raise your hand.

22 Yes, sir, Mr. Sellers. You're Juror No. 7. Who do you
23 know?

24 THE PANEL MEMBER: I don't know Mr. Baxter
25 personally, but we've done business together. My business

1 prior, I did do some work for Mr. Baxter.

2 MR. WARD: That's an example of something you could
3 imagine me and my client would want to follow up with. Right?

4 THE PANEL MEMBER: Sure.

5 MR. WARD: Did you do metal work for Mr. Baxter?

6 THE PANEL MEMBER: Yes.

7 MR. WARD: How long ago was that?

8 THE PANEL MEMBER: Probably two years ago, two and a
9 half.

10 MR. WARD: Okay. Only you can tell me. If you sat
11 on this jury and you had to rule against Mr. Baxter, would you
12 have difficulty doing that? If you had to rule against his
13 client?

14 THE PANEL MEMBER: No.

15 MR. WARD: All right.

16 THE PANEL MEMBER: Not at all.

17 MR. WARD: So the work you did for him doesn't start
18 you leaning one way or the other in the case?

19 THE PANEL MEMBER: No, sir, none.

20 MR. WARD: KPN and Ericsson, we start out equal. Is
21 that right?

22 THE PANEL MEMBER: Yes.

23 MR. WARD: Thank you, Mr. Sellers.

24 I did have one more question for you from your
25 questionnaire. I think you indicated that for lawsuits, you

1 feel like there's lots of lawsuits and no one takes
2 responsibility for their own conduct, words to that effect.
3 Is that right?

4 THE PANEL MEMBER: Yes, sir.

5 MR. WARD: And, again, there's no wrong answers in
6 voir dire. We appreciate you giving us that information.
7 We've obviously brought this lawsuit. Anything about your
8 feelings about lawsuits that starts you leaning one way or the
9 other before we start?

10 THE PANEL MEMBER: Not on this particular
11 application, no.

12 MR. WARD: Okay. Thank you, sir.

13 Anybody else in the jury box know Mr. Baxter, Ms.
14 Truelove, or McKool Smith? All right. First row of the
15 gallery.

16 And then second row, Juror No. 21, Mr. Whitlow?

17 THE PANEL MEMBER: Yes.

18 MR. WARD: Do you know somebody at that firm or Mr.
19 Baxter?

20 THE PANEL MEMBER: Just know of him and know Ms.
21 Truelove.

22 MR. WARD: Okay. Have you ever employed their firm
23 to represent you or Martex?

24 THE PANEL MEMBER: No.

25 MR. WARD: Anything about knowing Mr. Baxter or his

1 firm that's going to start you leaning one way or the other?

2 THE PANEL MEMBER: Not at all.

3 MR. WARD: All right. And you retired from Martex a
4 few years ago. Is that correct?

5 THE PANEL MEMBER: 14.

6 MR. WARD: Okay. And what did you do while you were
7 at Martex?

8 THE PANEL MEMBER: Purchasing.

9 MR. WARD: Okay. All right. Thank you, Mr.
10 Whitlow.

11 All right. And then I know this is a long shot, I think,
12 but anyone know Mr. Ted Stevenson? He's with the law firm of
13 Alston & Bird in Dallas. Anybody know Mr. Stevenson or Mr.
14 Doug Kubehl? He's with the law firm of Baker & Botts in
15 Dallas.

16 All right. So no one knows any of these law firms,
17 McKool Smith, other than what you talked to me about, McKool
18 Smith, Baker Botts, or Alston Bird in Dallas.

19 Anybody have friends or relatives that work for any of
20 those firms?

21 All right. Mr. Pitts, I'm going to talk to you, and
22 we're going to go down the row real quick or try to go not too
23 quick. I want to hear what you-all have to say.

24 I think you indicated you worked for the U.S. Postal
25 Service. Is that correct?

1 THE PANEL MEMBER: Yes, sir.

2 MR. WARD: And you were there for a number of years.
3 Correct?

4 THE PANEL MEMBER: Yes, sir.

5 MR. WARD: And where was it that you were working
6 for the U.S. Postal Service?

7 THE PANEL MEMBER: In Texarkana, Texas side and
8 Arkansas side.

9 MR. WARD: And were you there the entire time that
10 you worked or in the area?

11 THE PANEL MEMBER: Yes. This is -- well, I actually
12 worked a short while carrying mail in Pittsburg, Texas. I did
13 that for about three months.

14 MR. WARD: Okay. And your wife is an office manager
15 or was?

16 THE PANEL MEMBER: Was.

17 MR. WARD: Where was she an office manager.

18 THE PANEL MEMBER: A firm called Marshall Robinson,
19 Incorporated. They provided security for conventions across
20 the nation. And she worked in his office in Omaha and
21 traveled some to the different cities.

22 MR. WARD: Okay. Anything you've heard so far that
23 makes you lean one way or the other in this case?

24 THE PANEL MEMBER: No, sir.

25 MR. WARD: Thank you.

1 Right next to you Mrs. Lacy. Good morning.

2 THE PANEL MEMBER: Good morning.

3 MR. WARD: I think you indicated that you'd been a
4 defendant in a lawsuit. Is that right?

5 THE PANEL MEMBER: Well, we never went to trial. It
6 was mitigated.

7 MR. WARD: Something over a septic system?

8 THE PANEL MEMBER: Yes. Something dumb.

9 MR. WARD: Anything about that that causes you to
10 lean one way or the other? Obviously Ericsson is the
11 Defendant, you've been a defendant. Anything that would cause
12 you to lean one way or the other?

13 THE PANEL MEMBER: No.

14 MR. WARD: I know you said the name of the law firm,
15 and I didn't catch it. What was the name of the law firm you
16 worked for?

17 THE PANEL MEMBER: I worked for the Parole Division
18 TDCJ, Texas Department of Criminal Justice.

19 MR. WARD: I'm sorry.

20 THE PANEL MEMBER: As a parole officer.

21 MR. WARD: I misunderstood you. Thank you, ma'am.

22 Mr. O'Connor?

23 THE PANEL MEMBER: Yes, sir.

24 MR. WARD: Good morning.

25 THE PANEL MEMBER: Good morning.

1 MR. WARD: You said you had a Bachelor's degree.

2 What did you study when you were in college.

3 THE PANEL MEMBER: Occupational safety.

4 MR. WARD: Okay. Not computer science or anything
5 like that?

6 THE PANEL MEMBER: No.

7 MR. WARD: All right. You also indicated on your
8 questionnaire that lawsuits are a waste of taxpayer dollars?

9 THE PANEL MEMBER: Sometimes they are.

10 MR. WARD: All right. Sometimes they are. I agree
11 with you.

12 THE PANEL MEMBER: In my opinion.

13 MR. WARD: Does that belief you had, is that going
14 to start you leaning one way or the other in this case, kind
15 of the question I asked earlier?

16 THE PANEL MEMBER: No. That was more of a personal
17 frivolous lawsuit type of thing.

18 MR. WARD: Okay. All right. There's lots of
19 frivolous lawsuits. Right?

20 THE PANEL MEMBER: Yes, sir.

21 MR. WARD: And we've brought this lawsuit, and some
22 folks say every lawsuit is frivolous. That's not you?

23 THE PANEL MEMBER: No, I don't agree with that.

24 MR. WARD: Okay. Mrs. Wilder, I think you'd
25 indicated that you'd also been a defendant in a car wreck

1 case?

2 THE PANEL MEMBER: It was settled. We never went to
3 court, but yes.

4 MR. WARD: All right. Same question I've been
5 asking: Anything about that experience that starts you
6 leaning one way or the other before you hear evidence in the
7 case?

8 THE PANEL MEMBER: No.

9 MR. WARD: Okay. Fair enough.

10 Mrs. Collins, right next to you, on your questionnaire
11 you said that you'd been a former chairperson, I think, if I
12 wrote it down correctly. Have you been a chairperson on maybe
13 a church organization or --

14 THE PANEL MEMBER: Yes.

15 MR. WARD: Okay. And that's what I was wondering.
16 What kind of -- what kind of committee was it?

17 THE PANEL MEMBER: It was a prison committee.

18 MR. WARD: Okay. I just was curious about that.
19 Anything about what you've heard so far that starts you
20 leaning one way or the other before you've gotten to the
21 evidence in the case?

22 THE PANEL MEMBER: Oh, no, sir.

23 MR. WARD: All right. Next to you, Mr. Stevens, you
24 also indicated on your questionnaire that there's a large
25 number of lawsuits and it's a waste of money.

1 THE PANEL MEMBER: Kind of talking about the
2 frivolous lawsuits.

3 MR. WARD: Okay. Nothing about that belief that
4 starts you thinking this is one of those frivolous lawsuits?

5 THE PANEL MEMBER: No.

6 MR. WARD: Okay. All right. Thank you, sir.

7 Mr. Sellers, we've talked.

8 Let's go to Mrs. Brewer, Juror No. 8. Mrs. Brewer, you
9 told us that you're studying to become a nurse. Are you
10 working on getting your RN?

11 THE PANEL MEMBER: Yes, sir.

12 MR. WARD: And how long have you been at school at
13 NTC.

14 THE PANEL MEMBER: It's been off and on, but I just
15 started this semester.

16 MR. WARD: All right. And you are currently working
17 at Fresinious?

18 THE PANEL MEMBER: Yes, sir.

19 MR. WARD: Is that dialysis treatment?

20 THE PANEL MEMBER: Yes, sir.

21 MR. WARD: How long have you done that?

22 THE PANEL MEMBER: Eight years.

23 MR. WARD: Again, anything that causes you to lean
24 one way or the other before we get started?

25 THE PANEL MEMBER: No, sir.

1 MR. WARD: All right. Mrs. Dunagan, I think you
2 indicated you've been on a criminal jury, but you were an
3 alternate?

4 THE PANEL MEMBER: Correct.

5 MR. WARD: So you didn't get to deliberate in that
6 case?

7 THE PANEL MEMBER: I did not.

8 MR. WARD: They kicked you out before you got to the
9 jury room?

10 THE PANEL MEMBER: Exactly.

11 MR. WARD: Okay. Anything about that experience
12 being involved sitting on a jury that's causing you to lean
13 one way or the other before we get started?

14 THE PANEL MEMBER: No, sir.

15 MR. WARD: All right. Mr. McCoy, we've talked, but
16 anything that you've heard so far cause you to lean one way or
17 the other before we get started?

18 THE PANEL MEMBER: No, sir.

19 MR. WARD: All right. Thank you.

20 Mrs. Shields, I think you indicated on your questionnaire
21 that you'd worked for a personal injury law firm?

22 THE PANEL MEMBER: Yes.

23 MR. WARD: All right. Which firm was that?

24 THE PANEL MEMBER: Baldwin & Baldwin here in
25 Marshall.

1 MR. WARD: Okay. How long ago was that?

2 THE PANEL MEMBER: Before I had kids, so 2011.

3 MR. WARD: Okay. Anything about your experience
4 working for -- that's a plaintiff's firm. Correct?

5 THE PANEL MEMBER: Uh-huh.

6 MR. WARD: Anything about that work for Baldwin &
7 Baldwin that starts you to lean one way or the other before
8 you hear any evidence in the case?

9 THE PANEL MEMBER: No, sir.

10 MR. WARD: Okay. Mrs. Thomas, Juror No. 12. Good
11 morning, ma'am.

12 THE PANEL MEMBER: Good morning.

13 MR. WARD: How long have you worked for the City of
14 Marshall?

15 THE PANEL MEMBER: Three years.

16 MR. WARD: What did you do prior to working for the
17 City of Marshall.

18 THE PANEL MEMBER: I worked for Rio Animation.

19 MR. WARD: Okay. Anything that you've heard so far
20 that's going to cause you to lean one way or the other?

21 THE PANEL MEMBER: No.

22 MR. WARD: All right. Thank you, ma'am.

23 Mrs. Morrow, you've been 20 years at the City of
24 Marshall library?

25 THE PANEL MEMBER: Actually 21.

1 MR. WARD: 21 years?

2 THE PANEL MEMBER: July made 21.

3 MR. WARD: All right. And you work as a cataloger?

4 THE PANEL MEMBER: Uh-huh.

5 MR. WARD: And you've been on a civil jury before.

6 Is that right?

7 THE PANEL MEMBER: Yes.

8 MR. WARD: Were you the foreperson of that jury?

9 THE PANEL MEMBER: No, sir.

10 MR. WARD: Anything about that experience that
11 causes you to lean one way or the other before we get to any
12 evidence?

13 THE PANEL MEMBER: No, sir. I'm fine.

14 MR. WARD: Okay. Thank you, ma'am.

15 Mr. Henderson?

16 THE PANEL MEMBER: Yes, sir.

17 MR. WARD: You sound like you're a busy man.

18 THE PANEL MEMBER: All the time.

19 MR. WARD: All right. Working at the Jefferson ISD?

20 THE PANEL MEMBER: Yes, sir.

21 MR. WARD: When you're not there, you're preaching?

22 THE PANEL MEMBER: Yes, sir.

23 MR. WARD: Which one takes up more time?

24 THE PANEL MEMBER: Preaching.

25 MR. WARD: Preaching? All right. Anything that

1 you've heard that causes you to lean one way or the other?

2 THE PANEL MEMBER: No, sir.

3 MR. WARD: Thank you, sir.

4 Let's go to Juror No. 15, Mr. Hogue.

5 THE PANEL MEMBER: Yes, sir.

6 MR. WARD: I think you indicated on your
7 questionnaire that you write and edit computer code or you
8 have?

9 THE PANEL MEMBER: Yes, sir. For computer numerical
10 control machines.

11 MR. WARD: All right. Do you read C++ language by
12 any chance?

13 THE PANEL MEMBER: No, sir.

14 MR. WARD: Okay. Anything you've heard so far
15 that's going to cause you to lean one way or the other?

16 THE PANEL MEMBER: No, sir.

17 MR. WARD: Mr. Youngblood, good morning.

18 THE PANEL MEMBER: Good morning.

19 MR. WARD: I think you indicated on your -- your
20 questionnaire that you felt like large corporations and
21 governments are destroying small business or something to that
22 effect. Do you recall that?

23 THE PANEL MEMBER: Yes.

24 MR. WARD: Okay. And we appreciate you giving that
25 information. You aren't the only one who gave it. Is there

1 anything about that feeling that starts you leaning one way or
2 the other in this case before you've heard any evidence?

3 THE PANEL MEMBER: No. This looks like two big
4 corporations after each other.

5 MR. WARD: Okay. All right. We start out equal?

6 THE PANEL MEMBER: Yes.

7 MR. WARD: All right. Thank you, sir.

8 Mr. Adams?

9 THE PANEL MEMBER: Good morning.

10 MR. WARD: Good morning. How are you doing?

11 THE PANEL MEMBER: Good. How are you?

12 MR. WARD: I'm doing all right. You invented a
13 water bottle. Is that right?

14 THE PANEL MEMBER: No. It was actually called a
15 hydration rack --

16 MR. WARD: Okay.

17 THE PANEL MEMBER: -- and it was for sports like in
18 a dug-out for baseball. Keep the bottles clean and off the
19 ground for the young kids.

20 MR. WARD: All right. Did you actually get a patent
21 for that? Did you get through the process?

22 THE PANEL MEMBER: A patent attorney out of Tyler,
23 Texas.

24 MR. WARD: Okay. And did you obtain a patent?

25 THE PANEL MEMBER: Yes, I did. Me and a friend of

1 mine.

2 MR. WARD: Okay. Anything about the experience of
3 dealing with an attorney and the Patent and Trademark Office
4 that starts you leaning one way or the other in this case
5 knowing it's a patent dispute?

6 THE PANEL MEMBER: No, sir.

7 MR. WARD: All right. Thank you, sir.

8 And, Mrs. Saintignan, did I get that right? Kind of
9 close?

10 THE PANEL MEMBER: Yes, sir.

11 MR. WARD: You've been a defendant in a car wreck
12 case where insurance had to defend you. Is that right?

13 THE PANEL MEMBER: Yes.

14 MR. WARD: All right. Anything about the fact that
15 you've been a defendant going to cause you to lean one way or
16 the other?

17 THE PANEL MEMBER: No.

18 MR. WARD: We start out equal.

19 THE PANEL MEMBER: Yes.

20 MR. WARD: All right. Thank you, ma'am.

21 I'm going to move on. I know I said I was going to talk
22 to that row, but I'm running out of time, so I've got some
23 other areas that I want to -- I want to cover.

24 Now, Ericsson is obviously more well-known in the United
25 States than -- than KPN. We don't do business here. You're

1 going to learn that Ericsson actually has its North America
2 headquarters in the Eastern District of Texas up in Plano.

3 How many of you knew Plano was in the Eastern District?
4 It's up there close to Dallas, but it's part of this -- the
5 district we're in.

6 They've got about 10,000 employees in the United States.
7 They do business in 180 countries, including the United
8 States.

9 Here's my question. Folks have heard of Ericsson.
10 Ericsson does business in Texas. They've got employees here.
11 Are there folks on the jury that say, you know what? I'm
12 leaning in favor of Ericsson because they're in the United
13 States and they do business here and KPN doesn't.

14 And there's nothing wrong with that if you find yourself
15 leaning that way, but this is the time to raise your hand and
16 tell me that.

17 Mrs. Shields, you kind of -- you gave me a look like, I
18 don't know about that. Maybe I mis --

19 Ms. Denton, could we pass the microphone to Juror No. 11?

20 We just happened to make eye contact when I was asking
21 that question. Tell me what you're thinking.

22 THE PANEL MEMBER: I just don't think that that's a
23 deciding factor, I guess.

24 MR. WARD: Okay.

25 THE PANEL MEMBER: It seems kind of silly.

1 MR. WARD: Okay. You know, you might think it's
2 silly, but guess what? Sometimes people raise their hands
3 and, like I say, we've all had different experiences. Right?

4 THE PANEL MEMBER: Uh-huh.

5 MR. WARD: So anybody in the jury -- Mr. Sellers,
6 let me ask you, does it make a difference to you that Ericsson
7 is here, they're employing people, they are investing money in
8 the district and KPN isn't?

9 THE PANEL MEMBER: No, sir, none whatsoever.

10 MR. WARD: All right. We start out equal.

11 THE PANEL MEMBER: Yes.

12 MR. WARD: All right. Thank you, sir.

13 Anybody in the jury disagree and feel like, you know
14 what? Ericsson might be starting out a little bit ahead based
15 on what you just told me? Anybody in the jury? First or
16 second row of the gallery.

17 Yes, sir. Mr. Whitlow, No. 21.

18 THE PANEL MEMBER: If you said -- you said that
19 they're ahead, yes, they are ahead because they're in the
20 United States.

21 MR. WARD: Okay. No wrong answer. That's what we
22 need to know. You start out leaning in favor of them.

23 THE PANEL MEMBER: Well, no, I'm not leaning in
24 favor of them. I'm just saying that since they are doing
25 business in the United States, then they've got a little bit

1 of an edge.

2 MR. WARD: Okay. And that's not a wrong answer.

3 Who agrees with Mr. Whitlow, that they feel the same way, that
4 because they're doing business in the United States and in the
5 Eastern District, they've got a little bit of an edge in this
6 case? Anybody in the jury box? Anybody else agree with Mr.
7 Whitlow?

8 See, he didn't get thrown in handcuffs or put in jail.
9 He just told us how he felt.

10 Thank you, Mr. Whitlow.

11 Now, I know there are folks that had strong feelings
12 about lawsuits. How many of you on the jury panel feel like
13 if you have a dispute with a company, don't try to negotiate,
14 don't try to work it out, sue them first? Anybody feel that
15 way? All right.

16 There's another end of the spectrum, right, where you try
17 to work things out and you can't. And some folks say, I don't
18 care how long you work on it, how hard you try to work it out,
19 you should never bring a lawsuit for personal reasons,
20 religious reasons, tax reasons, whatever the reason might be.
21 Does anyone feel like, no matter how hard you try to work
22 things out, you should never file a lawsuit if you can't work
23 it out?

24 Anybody in the jury box feel like never file a lawsuit,
25 no matter how many of your rights have been -- how many rights

1 you feel like have been trampled? Anybody in the gallery feel
2 like you should never file a lawsuit for personal or religious
3 reasons or I don't care whatever reason, that you should never
4 file a lawsuit?

5 Mr. Pleban, you indicated you've been on a mock trial in
6 a patent case? Juror No. 22.

7 THE PANEL MEMBER: Yeah.

8 MR. WARD: Is that correct?

9 THE PANEL MEMBER: Correct.

10 MR. WARD: How long ago was that?

11 THE PANEL MEMBER: I honestly don't remember. If I
12 were to guess, it would be around 2013, 2014. It was when I
13 was at TSTC. I remember because I had to like ask for some
14 time off for class to go for it, but I can't exactly remember
15 exactly when in those two or three years.

16 MR. WARD: All right. No problem. Anything about
17 that experience that starts you leaning one way or the other
18 in this case?

19 THE PANEL MEMBER: Not really.

20 MR. WARD: Okay. When you say not really, that
21 makes me think, well, is there a little bit of something that
22 makes you lean one way or the other?

23 THE PANEL MEMBER: Not really.

24 MR. WARD: Okay. All right. Fair enough. Thank
25 you.

1 And by the way if I ask you something and you're like, I
2 don't want to say this in front of this entire panel, you can
3 say, Mr. Ward, I want to answer your question, but let's do it
4 in private at the bench. Okay?

5 Is there anything I've asked so far that someone says, I
6 would have answered it but it's too private. Anyone in the
7 jury box or anyone in the gallery?

8 THE COURT: Five minutes remaining, counsel.

9 MR. WARD: Five minutes, Your Honor?

10 THE COURT: Yes.

11 MR. WARD: Thank you.

12 Okay. Those of you that make it on this panel are going
13 to learn that there's really three large manufacturers, kind
14 of the big three manufacturers of infrastructure equipment,
15 and I bet some of you have heard of all of them. Of course,
16 Ericsson is one of them, Nokia is another one, and the third
17 one is Huawei. That's a Chinese company. It's actually the
18 largest manufacturer of infrastructure equipment in the world.

19 You-all are going to learn that my client KPN has done
20 business with all of them. Over the last few years, they've
21 stopped doing so much business with Ericsson and they've
22 started doing more business with Huawei and Nokia.

23 Here's my question to those of you in the jury box.
24 Knowing that they're doing business with a Chinese company,
25 just the simple fact that they're doing business with a

1 Chinese company, buying products from them, does that cause
2 anyone on the panel to lean against them? All right. I'll
3 give you a minute to process it.

4 Mr. McCoy, we made eye contact. I'm coming back to you.
5 Anything about the fact --

6 He's Juror No. 10, Ms. Denton.

7 Anything about the fact that we do business with a
8 company from China that causes you to lean one way or the
9 other in this case?

10 THE PANEL MEMBER: No. I mean, Huawei's been
11 scrutinized in the media. I don't know the details, but --

12 MR. WARD: They've been in the news, haven't they?

13 THE PANEL MEMBER: You know, spying on Americans and
14 whatnot. So I'm willing to listen to the facts, so --

15 MR. WARD: Okay.

16 THE PANEL MEMBER: Not that they would apply to
17 this, but...

18 MR. WARD: Yeah, I think they're banned from doing
19 business in the U.S. Is that what you're referring to?

20 THE PANEL MEMBER: I think so.

21 MR. WARD: Yes, sir. Obviously they're in the
22 Netherlands.

23 I'm not -- I'm not done quite yet. Go back to Mr. McCoy.

24 Anything about that, knowing that, do you start out
25 leaning whatsoever?

1 THE PANEL MEMBER: No.

2 MR. WARD: Okay. All right. Anyone feel
3 differently than Mr. McCoy in the box.

4 Mr. Stevens, I'm going to come to you. We made eye
5 contact as I asked that question, so I'm going ask if you
6 start out leaning one way or the other.

7 THE PANEL MEMBER: No.

8 MR. WARD: We're going to start out even, even
9 though we do some business with a company based in China.

10 THE PANEL MEMBER: No.

11 MR. WARD: Thank you, sir.

12 Anybody in the first or second row of the gallery feel
13 different than Mr. McCoy and Mr. Stevens, that the fact that
14 KPN does some business with a Chinese company starts you to
15 lean ever so slightly? Anybody on the first or second row?
16 The rest of the gallery?

17 All right. I've got two minutes remaining. Here's my
18 last theory, and it has to do with damages. I told you we
19 seek to recover \$30 million in damages. The vast majority of
20 those damages are associated with one patent. There's six
21 figures involved with another patent, and one of the patents
22 involves damages of \$512. All right? We've brought suit on
23 all three patents.

24 Is there anyone that feels like, Mr. Ward, the fact that
25 you just told me that there is a claim for \$512 in damages in

1 this case makes me lean in favor of Ericsson? All right. If
2 anyone feels that way -- that's not the only claim, but that
3 is a claim in this case. Anybody feel like that's ridiculous,
4 Mr. Ward.

5 Mr. Pitts, I see you pondering my question.

6 THE PANEL MEMBER: No, sir.

7 MR. WARD: Juror No. 1, Ms. Denton. I'm sorry.

8 THE PANEL MEMBER: No, sir. My thought was how
9 would you arrive at \$512 in damages on a patent. Your fees
10 are much more than that, I'm sure.

11 MR. WARD: I think they probably are. And you'll
12 hear from an expert.

13 I'll ask you this. Do you know how long a patent lasts?

14 THE PANEL MEMBER: I thought it was maybe 10 years?

15 MR. WARD: I think 20 years will be the evidence in
16 this case.

17 THE PANEL MEMBER: All right.

18 MR. WARD: So if someone starts infringing a patent
19 and there is 12 or 13 years left on the patent, there might be
20 a reason why you might want a finding about whether or not
21 someone's on your property. You understand that?

22 THE PANEL MEMBER: Yes, sir.

23 MR. WARD: And damages might continue to accrue if
24 they continue to use it. Do you follow me?

25 THE PANEL MEMBER: Yes, sir.

1 MR. WARD: All right. Knowing that, knowing that
2 \$512 -- we never would have brought a case over \$512, but
3 there's \$30 million involved in another patent. Knowing those
4 facts, does that cause you to lean one way or the other before
5 you hear the evidence?

6 THE PANEL MEMBER: No, sir.

7 MR. WARD: All right. Thank you, sir.

8 Anybody disagree that they're leaning based upon what I
9 just told you about this one claim on this one patent? First
10 or second row? All right.

11 THE COURT: Your time's expired, Mr. Ward?

12 MR. WARD: Okay. Thank you, Mr. Whitlow. I'll have
13 to hold it.

14 Obviously I had lots of questions. I got one last
15 question, and that is, is there anyone sitting there right now
16 that says if Mr. Ward would have asked this question, he'd
17 know that I'm not the right juror for KPN, I'm leaning against
18 his client, maybe you don't like my tie or the way I talked or
19 you don't like my questions.

20 THE COURT: Mr. Ward, your time is expired. Have a
21 seat.

22 MR. WARD: All right. Thank you, sir.

23 THE COURT: All right. Mr. Baxter, you may address
24 the panel on behalf of the Defendants. Would you like a
25 warning on your time?

1 MR. BAXTER: Five and two, Your Honor, if it please
2 the Court.

3 THE COURT: I will warn you when you have five
4 minutes and two minutes remaining.

5 MR. BAXTER: Thank you.

6 THE COURT: You may proceed.

7 MR. BAXTER: Good morning, folks. My name is Sam
8 Baxter. I'm a lawyer here in Marshall, Texas with McKool
9 Smith. I've been practicing law in Marshall about 52 years,
10 I'm afraid.

11 I used to be a DA in another life, and then I was judge
12 for a while, not like His Honor but down in the state court.
13 And since that time, I've been practicing law.

14 I'm married to Judge Lauren Parish. She is the retired
15 senior judge in the 115th District Court, was that judge there
16 for 24 years. And I am often asked do I have to stand up when
17 she comes in the room, and the answer is yes.

18 I have three kids, three adopted children: Andrew, from
19 Brazil, works here at the Boys and Girls Club; Matthew, who is
20 from Thailand, works as a computer specialist in Dallas; and
21 the princess, Sophie, is from India, and she actually is a
22 daycare worker in Bangkok, Thailand. I wish I could get her
23 to come home, but she likes it and won't come.

24 Now, is there anybody that knows my wife, Lauren Parish,
25 or been in front of her, had family members in court? She was

1 a very pleasant judge, but you didn't want to be a criminal in
2 her court. So if there's anybody that's got some residual
3 feeling about that, let me know.

4 Let me introduce for you the rest of the team. Here is
5 the most important member of our team, Melissa Kalka.

6 Stand up, Melissa.

7 She is a paralegal, and she's the one that holds this
8 case together. Without her, we probably can't even find the
9 courthouse tomorrow, but she's the most important person we've
10 got.

11 We've also got my friend and sometimes partner, Ted
12 Stevenson, from Dallas. Ted's got -- he's an empty nester
13 now. He's got three kids that have all flown the coop and ask
14 for tuition money.

15 Nick Matthews, my partner, has young children. Nick has
16 spent a lot of time the last week worrying about the flag
17 football game and not this case, but we'll get through.

18 We also have Doug Kubehl. He's got a couple of kids.
19 Doug is with Baker Botts. He's going to do the technical side
20 in this case along with his partner, Jeff Becker, who is
21 techie. And they'll be handling the technical part.

22 And then I have my partner, Jennifer Truelove, who we've
23 got out here in the benches. She's got three kids, two at
24 Texas and one here in Marshall High School. And we've been
25 practicing law here together for a pretty good while.

1 Let me ask you if you know the people on this side of the
2 courtroom. Mr. Ward, who talked to you, I gave Mr. Ward a job
3 out of law school, and I used to say I taught him all that he
4 knows. And he finally corrected me and said, no, you taught
5 me all you know; that's not all I know.

6 But Mr. Ward is now -- I'm shocked to hear he's been
7 practicing law 25 years. It seems like yesterday. But he's
8 in Longview in a law firm there. Anybody know Johnny Ward or
9 his partner?

10 I think we have lawyers from out of town. I think Ms.
11 Lexie White, who is here, is going to be talking to you this
12 afternoon. Anybody know any of the out-of-town lawyers?

13 The last person I want to introduce is our corporate rep,
14 Mr. Delgado.

15 Come up here, Mr. Delgado.

16 Let me brag on him just a minute. He's vice president at
17 Ericsson. He went to Stanford. Then he went to Harvard Law
18 School and unfortunately became a lawyer. But he gave that up
19 as fast as he could and went on the business side of Ericsson.
20 And you'll be hearing from him in this case and be interested
21 in what he's got to say in this case.

22 Thank you, Mr. Delgado.

23 Anybody know, ever heard of KPN? None at all.

24 They've got three patents that are in this case. The
25 Judge is going to let me have just a couple of minutes to talk

1 generally about the technology, not that I really understand
2 very much of it. But the first patent has got to do with an
3 attempt to have telephone companies--and basically that's AT&T
4 and Verizon and T-Mobile--find dead spots in their system.

5 And the way that patent works, as I understand it at
6 least, is that you load up the software or hardware and you
7 put it in the phone. And then at the base station, there's
8 corresponding hardware or software. And the phone pings the
9 base station and says, here I am and I want to measure the
10 strength of the signal. And so they send them information
11 back and forth, and that happens on a regular basis -- on a
12 basis of either milliseconds or seconds, and certainly not any
13 longer than that. And so that the phone would be continually
14 pinging the base station and the base station would ping back
15 and they measure strength.

16 And then you've got to take all that information and put
17 in some sort of coverage map to indicate where the holes are,
18 and that's the purpose of that patent.

19 The second patent has to do with what I'm going to call
20 blackout, and that it allows the phone company, if it's on
21 your phone during peak hours, to tell you you can't make a
22 call; that we're going to cut off certain devices.

23 Now, I think there's going to be a squabble in this case
24 about whether it's just devices like water meters or
25 electronic waste cans or things of that sort. But the patent,

1 when you read the patent, and you'll get a chance to hear
2 about it, is much broader than that, and it would allow the
3 phone company during peak hours to deny you service. That's
4 the second patent.

5 And then the third patent is the \$512 patent, and it's
6 some sort of channel authenticating patent. Now, the reason
7 apparently we owe them \$512 is that sometime in ancient
8 history we sold three black boxes to the military. And it's
9 the base that -- we don't make that anymore. We don't make it
10 at all. It's based on those three boxes that they want \$512.

11 Now, my partners and I have been talking about that, and
12 here's the alarm that they raised with me: Wait a minute, the
13 jury's going to get in that jury room and say, well, that
14 arrogant Ericsson, they wouldn't even pay \$512. What's wrong
15 with them? They must be infringing.

16 And the truth is, they never asked us for \$512.

17 MR. WARD: Your Honor, I'm going to object we've
18 been going five minutes without a question. It's an argument.

19 THE COURT: I sustain the objection. You need to
20 get on to specific questions of the panel, Mr. Baxter.

21 MR. BAXTER: I am, Your Honor. Thank you.

22 THE COURT: Let's do it right now.

23 MR. BAXTER: Yes, sir.

24 Now, here's one of the things that I think you're going
25 to hear about in this case, and that is you're going to hear

1 about claims in a patent. Is anybody familiar with that? Do
2 you have patents that have claims? Now, here's the
3 interesting part about that.

4 And can I get the first slide, Mr. Moreno, the one with
5 the legal language on it?

6 Here's what I think you're going to hear from His Honor
7 at some point in this trial is that a claim covers a product
8 where each of the claim elements is present in that product,
9 and if the product is missing even one element of a claim, the
10 product is not covered by the claim.

11 And I'm going to show you an example now, if I can have
12 the next slide, Mr. Moreno.

13 And this is one I've just made up, but it's a patent on a
14 football. And you see the elements that we talked about.
15 This is the claim: It's made of cow hide; it's got an
16 interior bladder; it's got two separate laces, each one and a
17 half feet long; what its weight is; what its measurement is.
18 And then there's this accused product that looks like a
19 football. Here's the problem, if I can have the next slide,
20 is that it doesn't have two separate laces each 1.5 feet long.

21 Now, I'm believing that under the instruction that Judge
22 Gilstrap's going to give you -- if you went back to that first
23 slide, Mr. Moreno -- that says if it's missing even one
24 element, it doesn't infringe.

25 How many people, if we can go back to the football, would

1 say, well, it's just missing one, but it's got the other five
2 so it must infringe. Is there anybody that would say that?
3 Anybody at all?

4 If, in fact, it turns out that their patent or patents
5 have a missing element, that they don't -- that we don't do
6 one of the things that the patent says to do, would there be
7 anybody that would hesitate to find a verdict of
8 non-infringement because that patent doesn't cover the
9 products that we sell? Anybody at all?

10 Yes, sir.

11 THE PANEL MEMBER: I thought I --

12 MR. BAXTER: There you go. You got one.

13 THE PANEL MEMBER: I think I understand your
14 analogy, but I know from experience that arguments from
15 analogy are not necessarily proof. So I'm going to hold my
16 peace until I know whether or not it applies.

17 MR. BAXTER: Fair enough. And certainly it is an
18 analogy, but it's just an example of the sort of thing that
19 you may hear in a case in that, yes, the product may do some
20 of the things in the patent, but it doesn't do everything.
21 And that's the issue that we have before you.

22 If it doesn't do everything and if Judge Gilstrap tells
23 you it's got to do everything, is there anybody that would
24 say, well, it does enough so I'm going to say it infringes?
25 Anybody like that at all? All right.

1 Now, Judge Gilstrap told you about the burden of proof,
2 and he told you that it was on the Plaintiff, they go first,
3 they've got the burden, and it's by a preponderance of the
4 evidence. And so one of the things let me ask you, if you
5 would expect the Plaintiff to prove this, is that the three
6 major carriers, T-Mobile and AT&T and Verizon, actually use
7 the features of the patent when they have their base stations?
8 Would you expect to hear from those carriers that, in fact,
9 they do it?

10 Is there anybody that's going to be disappointed if they
11 don't hear from the carriers one way or another? All right.

12 Now, how many people think that battery life is important
13 on their phones? Is there anybody that doesn't constantly
14 look at their phone to see what their battery life is and
15 wished they had a phone charger with them and why did I leave
16 it at home and why isn't it in my desk and why do my kids have
17 my phone charger? Is everybody pretty much concerned with
18 battery life?

19 Well, it turns out that this thing is a radio. That's
20 really what it is. When you -- when they get down to the
21 technicalities, it turns out that the phone, mine's old, but
22 it's still a radio. And every time it pings the tower or the
23 tower pings it, it takes up battery. Does everybody
24 understand -- anybody that thinks that's not right that the
25 phone's got to run on something and it turns out that every

1 time it gets turned on, then battery gets used.

2 Now, if you were to go into a store and say -- say you go
3 into a T-Mobile store, and you say you want to switch, I'm at
4 AT&T and I'm mad at them and I want to switch, and they go,
5 oh-ho, we're so glad to have you, going to sell you a new
6 phone, you're going to like our coverage; oh, by the way, I
7 just want to tell you there's a feature on your phone that's
8 going to drain your battery, just wanted you to know, anybody
9 still going to buy that phone?

10 You are because you don't care about battery life?

11 THE PANEL MEMBER: I just think it's kind of --

12 THE COURT: Just a minute. Let's wait until you get
13 a microphone.

14 THE PANEL MEMBER: I just think it's kind of
15 ridiculous because, like you said, the phone by sheer virtue
16 of existence, every single app is going to drain your battery
17 life. That's like if you do this activity, you're going to
18 have to eat more.

19 MR. BAXTER: Okay. All right. Do you think battery
20 life's important, sir?

21 THE PANEL MEMBER: Yes, it's important. But I think
22 the question is whether or not it drains the battery, but
23 whether or not it's worth the battery getting drained.

24 MR. BAXTER: Right. And so here is the reason your
25 battery would be getting drained is because the carrier wants

1 to know where the holes in their service are. It doesn't help
2 you. How about then?

3 THE PANEL MEMBER: I thought we were done. Could
4 you repeat that?

5 MR. BAXTER: I'm sorry. Yes, sir. What if the
6 testimony is that the draining of the battery just helps the
7 carrier and doesn't help you, the consumer, at all?

8 THE PANEL MEMBER: I would question what's your
9 basis for saying that.

10 MR. BAXTER: If that would be true, what do you
11 think?

12 THE PANEL MEMBER: Well, if it only helps the
13 carrier, then I would not want to be forced to have it.

14 MR. BAXTER: Okay. Thank you.

15 Anybody else feel differently than that.

16 Now, how many people think that privacy is important,
17 that -- I don't know how many of you have had the experience
18 that seems to be prevalent, but you talk about some topic or
19 you get on somebody's website and look at a pair of shoes that
20 you might be thinking about, a pair of hunting boots, and the
21 next thing you know, this thing is full of ads for hunting
22 boots, or you just talked about hunting boots and all of the
23 sudden it just appears. Everybody had that experience?

24 Does anybody think that privacy of your phone is
25 important and that you would like to guard that privacy as

1 much as you could? Is that important? Okay.

2 Now, I think one of the things that's going to be at
3 issue in this case is what I'm going to call the three-step
4 process on the first patent--that is, that's the patent --
5 that's the ping patent. And that is where you've, first of
6 all, got to have some software or hardware in your phone; then
7 the base station, let's say it's an Ericsson base station, has
8 to have some key turned on that will accept --

9 MR. WARD: Your Honor, I object. He's going into
10 how these patents and what the functionality is of his view of
11 the accused products. It's nothing to do with asking this
12 jury questions. It's not a question he's talking about.

13 MR. BAXTER: I'm fixing to ask him a question, Your
14 Honor.

15 THE COURT: Well, thank you, Mr. Ward.

16 I'm going to sustain the objection. This process is
17 about finding jurors that can be fair and impartial, and you
18 need to probe their thinking, Mr. Baxter, rather than ask them
19 to react to your views about what might be at issue.

20 MR. BAXTER: Yes, Your Honor.

21 THE COURT: Let's get into the mindset of these men
22 and women out here and how they feel about things.

23 MR. BAXTER: Yes, sir.

24 Let me see the red map, if I can, just a moment, Mr.
25 Moreno.

1 How many of you on TV have seen this red map? You can
2 hardly cut on the TV now. That's a coverage map. Anybody
3 have any idea how they generate this coverage map? You do?
4 Yes, sir?

5 THE PANEL MEMBER: Pretty sure they do it --

6 THE COURT: Just a minute, sir. You need to wait
7 until you get a microphone and then stand up?

8 THE PANEL MEMBER: Apologies. Pretty sure they do
9 it by some kind of pinging system.

10 MR. BAXTER: Okay. And what do you base that on,
11 sir?

12 THE PANEL MEMBER: Because the phone, in order to
13 connect to the other phones, has to connect to the towers.

14 MR. BAXTER: All right, sir. Anybody else think
15 that that's how the map is generated, by a ping system?
16 Anybody at all?

17 Let me ask how many people have got a cell phone.
18 Everybody? How many people are on AT&T? How many people are
19 on Verizon? How many people are on T-Mobile? Do anybody know
20 how the carriers find the dead spots now? Anybody know?

21 Is there anybody on this jury panel that can write code?
22 What kind of code do you write, sir?

23 PANEL MEMBER NO. 30: Primarily in my free time, I
24 sometimes dabble around in making games. I'm not really into
25 the wireless things.

1 MR. BAXTER: All right. Do you write C++ or
2 something else?

3 THE PANEL MEMBER: I dabble in C++. I primarily try
4 to write in python.

5 MR. BAXTER: Thank you, sir.

6 Anybody else a code writer? Anybody involved in their
7 work at setting up a network?

8 In the very back here. You're the computer science guy,
9 aren't you?

10 THE PANEL MEMBER: Yes. I actually developed and
11 co-wrote a C cross development compiler. I do know a little
12 bit about C.

13 MR. BAXTER: Okay. And explain that to me in
14 English what that is.

15 THE PANEL MEMBER: Cross development compiler?

16 MR. BAXTER: Yes.

17 THE PANEL MEMBER: It will take high-level language,
18 and when it takes it down to machine code, you can actually
19 bring it out in multiple languages.

20 MR. BAXTER: Okay. And you've done that?

21 THE PANEL MEMBER: Yes.

22 MR. BAXTER: Anything about that, sir, that you
23 think, you get on one of these PAT cases, it's going to be a
24 problem?

25 THE PANEL MEMBER: It's not going to be a problem.

1 It will probably give a little bit more insight.

2 MR. BAXTER: Okay. Thank you, sir.

3 Who on the jury panel is what I'm going call a phone
4 techie? That is, when people have problems with their phone,
5 you say, let me see that, I think I can help you out on that,
6 and whether it's getting an app to run or me just getting it
7 turned on or whatever it is. Who is -- who is that person on
8 the panel?

9 You are, ma'am? Kind of tell me what your experience
10 about that is and how you got the knowledge.

11 PANEL MEMBER NO. 4: I got the knowledge just from
12 trial and error, learn as you go. But I've been there 20
13 years, and we have a lot of people older than me that don't
14 even try. They just bring it to me.

15 MR. BAXTER: Folks like me --

16 THE PANEL MEMBER: Yeah.

17 MR. BAXTER: -- and they give it to you and you fix
18 it?

19 THE PANEL MEMBER: Regularly.

20 MR. BAXTER: Anybody else in the jury box that kind
21 of considers themselves the phone guru? Anybody out here on
22 the first row or the second row?

23 Let me talk to you about another burden of proof that His
24 Honor mentioned to you, and that's the burden of proof of
25 clear and convincing. And he told you that the Plaintiff's

1 got the burden of proof, and it's by a preponderance of the
2 evidence. But if the Defendant, that's me, wants to show that
3 either one or more of the patents is invalid, that they've got
4 to do so by clear and convincing standard. And he read that
5 to you.

6 And if you think about sort of a foot-long ruler, that
7 would be the Plaintiff has to get past the six-inch mark and
8 we probably have got to get past the seven-and-a-half-inch
9 mark. Would that pose a problem for anybody that our burden
10 is higher, but if we meet the burden, we've proved the patent
11 could be invalid? Is that a problem for anybody?

12 Now, some people get on juries and say, well, the Patent
13 Office gave them a patent so it must be good. And it turns
14 out that you learned from the patent film that that's not so;
15 that the jury system is the last check and balance on a patent
16 and that there may be information given to that jury that
17 wasn't given to the Patent Office, they didn't have all the
18 prior art, and they didn't understand the situation and,
19 therefore, that jury is the final arbiter of that.

20 Is there anybody that has any problem with saying, if you
21 prove it by a burden of clear and convincing, that we could
22 find the patent invalid? Can everybody do that?

23 Is there anybody that would hesitate to say, oh, well,
24 I'm really not a patent person and I'm not a techie person,
25 and the Patent Office gave them the patent so it must be good?

1 Is there anybody that would hesitate to invalidate the patent
2 if, in fact, you felt by a clear and convincing standard that
3 the patent were invalid?

4 Now, I want to talk to you about damages just a moment.
5 In this case the Plaintiff, as Mr. Ward said, is asking for
6 something in excess, in addition to the \$512, to the \$30
7 million that they're asking for in the first two patents, and
8 primarily it's on what they consider to be damages on the ping
9 patent.

10 Now, Ericsson is going to take the position and will in
11 this case, and you'll hear about it in opening statement, that
12 we don't owe any money, zero.

13 Now, is there anybody that's going to say, well, that
14 can't be right? They sued you; you must owe them something.
15 If Ericsson takes the position that it's zero, is there
16 anybody that has a problem with that? Anybody at all?

17 Now, then it gets a little bit more complicated, because
18 Judge Gilstrap is going to tell you, when he tells you what
19 the law in this case is, about a case called *Georgia-Pacific*.
20 At least I believe he will. And *Georgia-Pacific* is a case
21 that tells judges and lawyers how to go about thinking about
22 damages in a patent case.

23 But one of the things that's true when you analyze a
24 patent case in the construct of the *Georgia-Pacific* case is
25 that you have to assume the patent is infringed and the patent

1 is valid. That's what the damages people have to work with.

2 Anybody got any questions -- it's a figment of
3 everybody's imagination, but that's what we have to do, and
4 Judge Gilstrap is bound to do it because the appellate courts
5 say we have to.

6 Anybody got any question about that--that when you start
7 talking about damages in this case, despite the fact that we
8 think we don't owe them any money, that there's going to be a
9 number and the reason there's going to be a number is because
10 we have to assume that they're infringed and they're valid.
11 And that number that Ericsson is going to put out there, which
12 is about \$300,000, my fear is that someone's going to say,
13 well, because you used a number and you gave us a number, that
14 you think the patent is infringed somehow and you owe them
15 money. And I want to try to dispel that now. That's not so.
16 It's just that we have to under what the framework of the law
17 is that we have to do that in order to meet the burdens that
18 we have in the court.

19 But does everybody understand, does anybody have any
20 question, that just because we've put out a damage number
21 doesn't mean that we think we infringe any of the patents?

22 THE COURT: You have five minutes remaining.

23 MR. BAXTER: Thank you, Your Honor.

24 Does anybody have any question about that or does that
25 give anybody any concern that we're going to put out a damage

1 number when, in fact, we say we don't infringe? Anybody at
2 all? Anybody going to hold that against us?

3 All right. Now, who has had, besides my one inventor
4 here, who has had experience with the Patent Office, ever
5 dealt with it, know anything about it, know how it works, know
6 anything at all.

7 You do. And, ma'am, you do? Okay. You, sir, you've got
8 a patent. Is that right?

9 PANEL MEMBER NO. 30: We had done the research and
10 was prepared to do the patent. We didn't go through the
11 entire process.

12 MR. BAXTER: Okay. Is that still pending?

13 THE PANEL MEMBER: No. We had a patent pending for
14 four years. And then, due to funding, we negated that.

15 MR. BAXTER: It turns out it's expensive, isn't it?

16 THE PANEL MEMBER: Yes.

17 MR. BAXTER: Yes, it is. How was your experience
18 with the Patent Office? Did you get in some to and fro with
19 them about claims and language?

20 THE PANEL MEMBER: The -- the difficulty on ours was
21 the software covered such a broad range, it's hard to narrow
22 it down to just one patent without stepping on other
23 patents --

24 MR. BAXTER: Okay.

25 THE PANEL MEMBER: -- as well.

1 MR. BAXTER: That is always a problem, isn't it?

2 THE PANEL MEMBER: Yes.

3 MR. BAXTER: Did you finally have to give up on
4 that?

5 THE PANEL MEMBER: We gave up due to the grant
6 funding ended.

7 MR. BAXTER: Anything about that that's going to
8 cause you to lean one way or another in this case, sir?

9 THE PANEL MEMBER: No.

10 MR. BAXTER: Okay. Thank you very much.

11 Anybody else know anybody that's got a patent or had any
12 experience with the Patent Office?

13 Who works for a company that owns intellectual property?
14 Texas Eastman has a bunch, I know.

15 You do, sir.

16 PANEL MEMBER NO. 23: Yes, sir.

17 MR. BAXTER: Tell me about that.

18 THE PANEL MEMBER: I work for Westlake Chemical. A
19 lot of it has to do with catalyst chemistry.

20 MR. BAXTER: Okay. Have you ever been involved in
21 applying for a patent or researching for a patent or been
22 asked to help on that?

23 THE PANEL MEMBER: No, I haven't.

24 MR. BAXTER: Do you know anything at all about the
25 patent process?

1 THE PANEL MEMBER: I know about the patent process
2 just because I work with folks that have been involved with
3 that, but other than that, no.

4 MR. BAXTER: Did they tell you it was a good
5 experience or a lengthy, long experience?

6 THE PANEL MEMBER: Lengthy, long experience.

7 MR. BAXTER: Okay. All right. Thank you, sir.
8 Anything about that going to cause a problem in this case?

9 THE PANEL MEMBER: No, sir.

10 MR. BAXTER: All right.

11 Anybody else know somebody or work for a company that's
12 got a patent or intellectual property and uses it?

13 Now, you were kind enough to fill out the questionnaires.

14 THE COURT: You have two minutes remaining, Mr.
15 Baxter.

16 MR. BAXTER: Thank you, Your Honor.

17 And His Honor gave us one copy of those. There was a
18 question on there, and I think you were asked about it
19 earlier, about big versus little, does the little guy somehow
20 not stand a chance against the big guy. Who believes that?
21 All right.

22 Let me ask you, No. 11, do you understand in this case
23 that's not the facts?

24 THE PANEL MEMBER: Yes.

25 MR. BAXTER: It ain't big versus little.

1 THE PANEL MEMBER: Neither are little.

2 MR. BAXTER: It's big and bigger. Anything that is
3 going to cause you a problem?

4 THE PANEL MEMBER: No, sir.

5 MR. BAXTER: I don't need to worry about that?

6 THE PANEL MEMBER: No, sir.

7 MR. BAXTER: Thank you very much.

8 Anybody else believe that the fact that Ericsson is a big
9 corporation and, of course, the Plaintiff's a big corporation,
10 anything about that that causes you any concern of sitting on
11 this jury and sitting in judgment in the positions they take?

12 And as Mr. Ward said, they are in Plano, they've got
13 10,000 employees or so up there, they're an Eastern District
14 company, and we're proud to be here and it's my pleasure to
15 represent them in this trial. I think you're going to find
16 the information to be interesting, and we look forward to
17 bringing it to you.

18 And that's all I have, Your Honor.

19 THE COURT: All right. Thank you, counsel.

20 Counsel, approach the bench, please.

21 (The following was had outside the hearing of the
22 jury panel.)

23 THE COURT: Mr. Ward, does the Plaintiff have any
24 challenges for cause?

25 MR. WARD: Your Honor, I'd like to follow up with

1 Mr. Whitlow, 21. He said that Ericsson was starting out a
2 little bit ahead.

3 MR. BAXTER: He's so far outside of the range.

4 MR. WARD: I think he is, but --

5 THE COURT: Do you have any others besides 21?

6 MR. WARD: No, sir.

7 THE COURT: Mr. Baxter, do you have any challenges
8 for cause?

9 MR. BAXTER: We don't, Your Honor, no, sir.

10 THE COURT: All right. No. 4, No. 11, and No. 26
11 indicated scheduling problems. We're going to seat eight.
12 Each side's going to strike four. That's 16. I don't see
13 that we get to either Mr. Whitlow or No. 26, Ms. Clark, on her
14 scheduling issue. But I'm prepared to hear from Mrs. Wilder,
15 No. 4, about her scheduling problems and Mrs. Shields, No. 11,
16 about her scheduling problems. But even if those two are
17 excused, we won't reach 21.

18 MR. WARD: Very well.

19 THE COURT: All right. If you'll take your places,
20 I'll...

21 (The following was had in the presence and hearing
22 of the jury panel.)

23 THE COURT: Ladies and gentlemen, I'm going to need
24 to talk to a few of you here at the bench. Most of you, I'm
25 not going to need to talk to you here at the bench. Those of

1 you that I'm not going to need to speak with at the bench, I'm
2 about to excuse you for recess, but I want to go over a couple
3 of ground rules about that.

4 When I excuse everybody except the people I'm going to
5 identify in a second that I need to remain so I can talk to
6 them here at the bench, when I excuse everybody else for
7 recess, if you'll file out through the double doors in the
8 back of the courtroom. Once you go through those double
9 doors, if you take a left and go around the corner, you'll
10 find two important things--the water fountain and the rest
11 rooms. Obviously if you turn to the right, you're going to go
12 out toward the entrance to the building.

13 I'm going to ask that nobody leave the building during
14 this recess. Stay in this building and stay on this floor.
15 Don't go to any other floor.

16 Also, I want to remind you, we haven't heard any evidence
17 in this case. So while you're on recess, if you happen to
18 know somebody who's on the panel or you just are friendly and
19 want to talk like my wife is and you want to talk to a
20 stranger, talk about anything you want to talk about, except
21 don't talk about anything that happened here in the courtroom.

22 Talk about this wonderful rain we got overnight that we
23 needed so badly, talk about upcoming football season in your
24 community, talk about your grandchildren or your kids. Don't
25 talk about anything that happened during jury selection in the

1 courtroom.

2 Again, you have not heard any evidence in this case. And
3 I'll remind you, and I'm going to tell you this later, what
4 the lawyers tell you in this case is not evidence. So for
5 those reasons, don't talk about anything during the recess
6 that happened while you were in the courtroom.

7 And with that, ladies and gentlemen, I need to ask to
8 stay back and not leave during recess Mrs. Wilder, No. 4, and
9 Mrs. Shields, No. 11. Other than those two ladies, I am now
10 excusing under those instructions everybody else on the panel.

11 And, Mr. Sellers, if you'll start us off and lead the
12 way. Thank you.

13 (Whereupon, the jury panel left the courtroom.)

14 THE COURT: All right. Be seated, please.

15 Counsel, approach the bench.

16 Mrs. Wilder would you come around and let me see you up
17 here, please?

18 (The following was had at the bench.)

19 THE COURT: Good morning, Mrs. Wilder. This is our
20 microphone. If you and I can just talk quietly toward this
21 microphone.

22 THE PANEL MEMBER: Okay.

23 THE COURT: You indicated when we started this
24 morning, Mrs. Wilder, that you might have something very
25 serious or difficult if you were required to stay all week and

1 be on this jury. Tell me about that.

2 THE PANEL MEMBER: I have two different things.
3 Neither one existed when I filled out that thing.

4 My mother has to do post-op on Friday for her vein
5 surgery on Monday, and my husband is having a heart cath on
6 Thursday, and I'm driving them both, or I'm supposed to.

7 THE COURT: Your mother has had or will have vein
8 surgery?

9 THE PANEL MEMBER: She will have. She's got to do
10 the post-op -- pre-op, what you do in front of it.

11 THE COURT: Is she having that surgery today? You
12 said on Monday.

13 THE PANEL MEMBER: She has it Monday. That's
14 supposed to be on Friday. My husband's heart cath is on
15 Thursday. They are both in Shreveport.

16 THE COURT: Your husband's heart cath is on
17 Thursday?

18 THE PANEL MEMBER: Yes.

19 THE COURT: And when is the your mother having her
20 surgery?

21 THE PANEL MEMBER: Monday. They are doing stuff for
22 it on Friday.

23 THE COURT: Okay. They are doing the prep for her
24 surgery on this Friday?

25 THE PANEL MEMBER: Yes, all the bloodwork and

1 whatever else they're doing.

2 THE COURT: Okay. And I gather both your husband
3 and your mother are dependent upon you to get them back and
4 forth?

5 THE PANEL MEMBER: Yes.

6 THE COURT: Okay. All right. Mr. Ward, do you have
7 any questions of Mrs. Wilder?

8 MR. WARD: I have no questions.

9 THE COURT: Mr. Baxter?

10 MR. BAXTER: No, Your Honor.

11 THE COURT: Okay. Mrs. Wilder, I'm going to excuse
12 you from the jury panel. Obviously I think we have more than
13 enough people to seat a jury, and I'm not going to prevent you
14 from being with your husband and your mother during this. I'm
15 going to ask you to join the rest of the panel outside for
16 recess.

17 THE PANEL MEMBER: Okay.

18 THE COURT: But please don't discuss the fact that
19 I'm going to excuse you or anything about this discussion with
20 anybody else on the panel. Okay?

21 THE PANEL MEMBER: Appreciate it.

22 THE COURT: Mrs. Shields, would you come up, please?

23 Good morning, Mrs. Shields. This is our microphone, if
24 you and I can just talk quietly here.

25 When we started the process this morning, when I asked if

1 anybody would have a very difficult time being available all
2 week if they were selected, you raised your hand.

3 THE PANEL MEMBER: Yes.

4 THE COURT: Tell me about that.

5 THE PANEL MEMBER: It's -- we have a -- we're
6 supposed to be out-of-state on Thursday, starting on Thursday.
7 So it's not a procedure or anything. I just didn't want to
8 not mention.

9 THE COURT: Okay. When you say "We are supposed to
10 be," who is the 'we' there?

11 THE PANEL MEMBER: My entire family.

12 THE COURT: Is this a vacation or is it business or
13 what is it?

14 THE PANEL MEMBER: Well, it's supposed to be
15 business, but it's kind of a vacation as well, yes, sir.

16 THE COURT: Okay. And where are you going?

17 THE PANEL MEMBER: Hot Springs, Arkansas.

18 THE COURT: Okay. And you're leaving when?

19 THE PANEL MEMBER: Thursday afternoon. So it would
20 be after the school day on Thursday.

21 THE COURT: And you and your husband are going?

22 THE PANEL MEMBER: Uh-huh. And we have three kids.

23 THE COURT: And your three kids? Are there other
24 family members going?

25 THE PANEL MEMBER: No, sir.

1 THE COURT: And what's the business component? I
2 understand what the vacation part is.

3 THE PANEL MEMBER: Okay. He is looking -- there's
4 an equipment that he's -- some of the equipment my husband
5 uses. He's going to be looking into purchasing a new piece of
6 equipment.

7 THE COURT: Okay. And has he already got an
8 appointment with somebody?

9 THE PANEL MEMBER: No, no, nothing formal scheduled.
10 It's just kind of as he was there, he was going to inquire.

11 THE COURT: Okay. And I gather you-all would be
12 driving? It's not far.

13 THE PANEL MEMBER: Yes, sir.

14 THE COURT: You're not flying?

15 THE PANEL MEMBER: No.

16 THE COURT: And you already have reservations for a
17 place to stay?

18 THE PANEL MEMBER: Yes, sir.

19 THE COURT: Okay.

20 All right. Mr. Ward, any questions of Mrs. Shields?

21 MR. WARD: No questions.

22 THE COURT: Mr. Baxter?

23 MR. BAXTER: No.

24 THE COURT: Mrs. Shields, I'm going to excuse you
25 from jury duty.

1 THE PANEL MEMBER: Okay.

2 THE COURT: We're not going to be finished with this
3 case by Thursday afternoon.

4 THE PANEL MEMBER: Okay.

5 THE COURT: I'm going to ask you to join the rest of
6 the panel outside the courtroom for recess, but don't
7 discuss --

8 THE PANEL MEMBER: Yes, sir.

9 THE COURT: -- what we've talked about here.

10 THE PANEL MEMBER: Yes, sir.

11 THE COURT: Okay. Thank you.

12 THE PANEL MEMBER: Thank you very much.

13 THE COURT: Okay, counsel, I've excused No. 4 and
14 I've excused No. 11, which tells me we should strike through
15 18. Do you agree?

16 MR. BAXTER: Yes.

17 MR. WARD: Yes.

18 THE COURT: How long do you need to strike your
19 list?

20 MR. BAXTER: About 20 minutes, 15.

21 THE COURT: As much as you can get. Right?

22 MR. BAXTER: Yes, sir.

23 THE COURT: A quarter to 12:00. That will give you
24 21 minutes.

25 MR. BAXTER: Yes, sir.

1 THE COURT: All right.

2 (The following was had in open court.)

3 THE COURT: While counsel exercise their peremptory
4 challenges, the Court stands in recess.

5 (Brief recess.)

6 THE COURT: Be seated, please.

7 Ladies and gentlemen, if you will listen carefully as
8 your name is called, when your name is called please come
9 forward and take a seat in the jury box.

10 As I told you, we're going to seat eight jurors in this
11 case. I'm going to ask that the first four people whose names
12 are called, if you will take a seat on the first row of the
13 jury box, and the second four take a seat on the second row or
14 the back row of the jury box. And to make sure that nobody is
15 bunched up and you're evenly spaced, I'm going to ask the
16 first person whose name is called to go on the front row, go
17 down to the last chair, stand in front of the last chair. The
18 second person whose name is called, enter the jury box on the
19 front row and go down to the third chair from the end and
20 stand in front of it and leave the second chair from the end
21 in between as a vacant chair. And then the third person will
22 do the same thing with the chair in between, and the fourth
23 person.

24 And then when we get to No. 5 who will be the first of
25 the four people on the back row, if you'll do the same

1 thing--go down to the last chair and stand and leave a chair
2 vacant between you; and the sixth person on the jury, who will
3 be the second person on the second row. That way we'll have
4 four on the front row, four on the back row, and everybody
5 should have a vacant chair between you to give you plenty of
6 room.

7 And if all eight of you will remain standing up till all
8 eight of you are in the jury box and I instruct you, I would
9 appreciate it.

10 So with that, I'll ask our Courtroom Deputy Ms. Brunson
11 to call the names of our eight members of the panel that have
12 been selected as jurors in this case.

13 THE CLERK: Louis Pitts, Vickie lacy, Timothy
14 O'Connor, Bobby Stevens, Kourtney Brewer, Gail Morrow,
15 Clifford Adams, Rhonda Saintignan.

16 THE COURT: Please be seated, ladies and gentlemen.

17 Those of you that were not selected on the jury, I'm
18 about to excuse you from your service here today, but before
19 you leave I want to take a moment and tell you how much the
20 Court appreciates you being here.

21 I hope you understand that even though you weren't
22 selected to serve on the jury, you have performed very real
23 and important public service by being here. I hope you also
24 understand if just these eight people had showed up we would
25 not have been able to select a jury. You being here, even

1 though you weren't selected, facilitated the process that
2 could not have gone forward without you being here. So what
3 you've done is very important and in a very real and tangible
4 way you have helped uphold the Seventh Amendment to our U.S.
5 Constitution by being here. That is no small thing, ladies
6 and gentlemen.

7 I want you to know that on behalf of the Court and the
8 Court staff, all of these parties, and all of these trial
9 teams, the lawyers that are in this courtroom, everyone of
10 them I speak for when I say we appreciate the sacrifice you've
11 made to be here. It was not a bright sunny day when you got
12 up and drove to the courthouse in Marshall. Some of you came
13 40, 50 miles away down two-lane roads in many cases to get
14 here. Every one of you had other places to be today that
15 called on your time, you had other things to do in your lives
16 that were important to you and your family, and you set those
17 things aside and you sacrificed by being here as directed as
18 good citizens to do your duty and report for jury duty. And
19 even though you weren't selected, what you've done is very
20 real and meaningful and important, and on behalf of the entire
21 Court and the lawyers and the parties in this case, I want you
22 to know that we very much recognize and appreciate what you've
23 done.

24 Now, when I excuse you in just a moment, if you'll exit
25 through the double doors in the back and if you'll turn to the

1 right as you go out, you'll go right by the Clerk's Office.
2 If you need any documentation for an employer as to why you
3 didn't show up at work today, if you have any questions about
4 your service, if you have anything that's on your mind that
5 you need some direction or answers to, if you will see
6 Ms. Clendening or her staff, the staff of the Clerk's Office
7 will be more than happy to help you.

8 Ladies and gentlemen, thank you for being here and thank
9 you for being good citizens that have responded as you have by
10 presenting yourself for jury selection, even though you
11 weren't chosen.

12 With that, ladies and gentlemen, those not selected from
13 the panel are now discharged and excused.

14 (Whereupon, the jury panel left the courtroom.)

15 THE COURT: All right. I'd like to ask everybody
16 but the eight members of the jury to be seated, please.

17 And members of the jury, I'm going to ask Ms. Brunson to
18 administer the oath to you as jurors at this time.

19 (Whereupon, the oath was administered by the Clerk.)

20 THE COURT: Please be seated.

21 Ladies and gentlemen, we're about to recess for lunch.
22 It's about five minutes until 12:00, but there are some things
23 I need to go over with you before I let you recess for lunch.

24 First of all, I need to talk to you about lunch. I've
25 entered an order directing the Clerk's Office to provide lunch

1 to you each day during this jury trial. That means you are
2 not going to have to leave this building and get in your
3 vehicles and go some place and find some lunch somewhere.
4 That will save us some time, it will make it easier on you,
5 and it will work a lot more efficiently. So when you leave in
6 just a few minutes, I'm going to ask you to go into the jury
7 room and lunch will be brought to you there. And each day
8 that we're in trial lunch will be brought to you in the jury
9 room by the Clerk's Office.

10 I have no idea what's on the menu, it's usually very good
11 stuff, but that burden is something you won't have to worry
12 about. I know those of you that are not from Marshall may not
13 even know where is a good place to go to get lunch. So don't
14 worry about that. That's going to be provided by the Court.

15 Also, while you're on this lunch break I'd like you to
16 make sure you take a moment and make sure that Ms. Clendening
17 and the Clerk's Office has a good working cell phone number
18 for you. It is possible that we might need to reach you after
19 hours after the end of trial for one day and before we start
20 the next day. There are innumerable things that can come up.
21 I don't think any of that's likely, but I always ask the
22 members of the jury to make sure that the Clerk has a good
23 cell phone number in case you need to be reached after hours.
24 So please try to make sure she has those numbers for you
25 during the lunch break.

1 And speaking of cell phones, I'm going to ask that you
2 leave your cell phones, if you have them with you, in the jury
3 room when you come back from lunch today. And I'm going to
4 ask starting tomorrow, when you come to the courthouse either
5 leave them at home or leave them in your vehicles, but don't
6 bring them into the building.

7 One of the things I'm going to tell you later in this
8 process, ladies and gentlemen, is that you're not to do any
9 outside research about anything related to this case. The
10 decisions that you're going to make as jurors must be limited
11 to the sworn testimony of the witnesses given under oath and
12 subject to cross examination that takes place from this
13 witness box in this courtroom and the exhibits and documents
14 that the Court has already judged to be admissible under the
15 rules of evidence and which the Court has pre-admitted to be
16 published and presented to you during the trial. No outside
17 sources of information are allowed whatsoever, and, in fact,
18 if there is the introduction of any outside sources of
19 information beyond the testimony and the exhibits that are
20 going to be presented to you in open court during the trial,
21 if that should happen it would probably require me to declare
22 a mistrial, excuse all of you, start all over again with a new
23 jury, and there would be innumerable amount of time,
24 resources, and money wasted. So it's very important that you
25 not do any outside research.

1 And I think we all understand that smartphones today are
2 just a small computer that fits in your pocket, and if you
3 have it in the jury room and you heard something from a
4 witness you weren't quite sure about, you might be tempted to
5 do an online search, you might be tempted to use that phone as
6 a way to violate the instruction that I'm giving you. So I
7 understand if you're expecting a critical call from somebody
8 related to your work or your business, if there's some other
9 reason, but leave the phone in your vehicle and when we recess
10 or when we break for lunch you'll have an opportunity to go to
11 the vehicle and check. But otherwise there's too big a risk,
12 so I'm going to ask you not to bring your cell phones back
13 into the courtroom today and not to bring them to the
14 courthouse at all tomorrow through the end of the trial.

15 Now, you're going to see these lawyers use iPhones and
16 iPads and similar type electronic devices. Those are just
17 what legal pads and pens used to be back in the earlier days.
18 They are tools of the trade, if you will, so they have a
19 justifiable reason to use them. So don't feel like they are
20 getting one set of rules and you are getting another if you
21 see them using those kinds of electronic devices. However,
22 they are under very strict instructions from me to make sure
23 those devices don't sound, ring, or interrupt this process,
24 and they're likely to have them confiscated if their devices
25 ring or sound or interrupt this trial. So they'll be very

1 careful so that you can see them but you won't hear them,
2 hopefully.

3 Also, ladies and gentlemen, during the lunch break I'm
4 going to ask you not to discuss anything that happened during
5 jury selection today. As I told you when you recessed a
6 little bit ago, you haven't heard any evidence in this case,
7 and what the lawyers tell you in this case is not evidence;
8 it's just what they hope the evidence will prove, but it is
9 not evidence. So please don't discuss anything that happened
10 during jury selection today while you're at lunch.

11 Also and in line with my discussion with you about
12 outside sources of information, you're not to communicate with
13 anybody about this case. That means orally, that also means
14 digitally or electronically.

15 And I can tell you, unless you live alone, when you get
16 to wherever you live tonight at the end of the day, whoever is
17 there when you walk through the door, I guarantee you the
18 first thing they are going to say is, Well, what happened in
19 federal court in Marshall. Don't even try to answer that
20 question, because if you do you're going to almost inevitably
21 violate the instruction I'm giving you about not discussing or
22 communicating about the case in any way.

23 And this all comes back to that one fundamental principle
24 that the sole source of the information that you will have
25 before you to draw upon to answer the questions I'm going to

1 submit to you in the verdict form after all the evidence has
2 been presented must be limited to and must only come from the
3 sworn testimony of the witnesses and the exhibits that are
4 admitted into evidence by the Court; nothing more. And that
5 is a fundamental principle throughout this entire process.

6 So with that said, when I say don't communicate about the
7 case in any way, that means not only don't talk to whoever you
8 live with about it when you get home tonight, that means don't
9 get on the telephone and talk to anybody about it, but it also
10 means if you're a user of social media of any type, don't post
11 on Facebook, don't tweet on Twitter, don't go to Tik Tok,
12 don't go to any kind of online social media platform and put
13 anything about this case, because you will be violating my
14 instruction if you do.

15 And again, I give you this instruction to protect the
16 integrity of the process. That's the sole reason for it. And
17 I want you to understand that a violation of these
18 instructions jeopardizes the integrity of the whole process
19 and there are very real risks and penalties associated with
20 that as regards wasted time, wasted effort, wasted money. And
21 I know you'll respect that, but I just want to put that in the
22 proper context for you and make sure that you understand it.

23 Also, ladies and gentlemen, over the course of this trial
24 you're going to be coming in every morning, you're going to be
25 leaving every evening. There will be times inevitably when

1 you're going to pass one of these lawyers either on the
2 sidewalk out front, on the front steps, in the hallway
3 somewhere you're going to pass one of these support people, a
4 paralegal, or some other person on the support team on one
5 side or another in this case. Whenever you come in close
6 contact with somebody associated with either the Plaintiff or
7 the Defendants, they're not going to speak to you. They're
8 not going to enter into a conversation with you. They're not
9 going to stop you on the front steps outside with a cup of
10 coffee in their hand and say, Good morning. How are you?
11 Tell me about your day. They're not going to do that because
12 I've instructed them not to.

13 And that goes back to the fundamental principle that the
14 only contact, the only communication, the only material of any
15 kind that you should have before you as a part of your
16 decision-making process at the end of this trial must come
17 only in open court under oath subject to cross examination and
18 the exhibits that the Court has scrutinized carefully before
19 the trial and found to be admissible under the rules of
20 evidence.

21 So when that lawyer or paralegal, or whoever it is, on
22 either the Plaintiff's side or the Defendants' side walks
23 right by you on the front sidewalk or the front steps or
24 whenever you may come in contact with them and they don't look
25 you in the eye, they don't stop, they don't enter into

1 conversation, they're not friendly, they're not gregarious
2 like we in East Texas usually are, don't hold that against
3 them. Don't penalize them in your own mind for that in any
4 way because, be aware, they are simply doing what the Court's
5 instructed them to do and they're following my directives to
6 them in that regard. So please keep that in mind.

7 All right, ladies and gentlemen it's five minutes after
8 12:00 according to the clock in the courtroom. With those
9 instructions I'm going to excuse you for lunch, which should
10 be waiting for you in the jury room. When you come back from
11 lunch, I'm going to give you some additional instructions on
12 the record.

13 After I've given you those instructions, the parties are
14 going to present their opening statements to you. The
15 Plaintiff will go first; the Defendant will go second. Those
16 opening statements are not arguments; they are intended to
17 provide a roadmap to you about what each side believes the
18 evidence that they are going to present will show you.

19 Once you've heard opening statements from the Plaintiff
20 and from the Defendant, then we'll proceed with the evidence.
21 And the Plaintiff has the burden of proof on most of the
22 issues, and they will go first and they will present their
23 witnesses, and they'll call their witnesses, those witnesses
24 will testify, and then they'll be cross examined by Defense
25 counsel.

1 And when the Plaintiff's put on all their witnesses, the
2 Plaintiff will rest their case in chief. And that's what
3 that's called--their case in chief. And when the Plaintiff
4 rests their case in chief, then the Defendants will call their
5 witnesses. And they'll put them on and they'll testify under
6 direct examination, and the Plaintiff's lawyers will cross
7 examine them. And when each of the Defendants' witnesses will
8 have testified, then the Defendants will rest their case in
9 chief.

10 Then because the Plaintiff has the burden of proof on
11 infringement and damages, they'll have the opportunity to call
12 rebuttal witnesses, if they choose to. They're not required
13 to. But they will have an option to call witnesses to rebut
14 any of the testimony that the Defendants have put on in the
15 Defendants' case in chief. And if they do that, they will
16 call their witnesses in their rebuttal case and they'll
17 testify, and then they'll be cross examined by Defense
18 counsel. And then if there are rebuttal witnesses at the end
19 of the rebuttal case, or if there aren't rebuttal witnesses,
20 then at the end of the Defendants' case in chief you will have
21 heard all the evidence.

22 And once you've heard all of the evidence in this case,
23 then I will give you my final instructions, sometimes called
24 the Court's charge to the jury. And then counsel for the
25 Plaintiff and Defendant will present their closing arguments.

1 And after you've heard closing arguments from the
2 Plaintiff and the Defendants, then I will instruct you to
3 retire to the jury room and to deliberate on your verdict.

4 And when you go back to the jury room, I will send a
5 document called the verdict form with you and it will have
6 several questions in writing that you're to answer. Those are
7 the questions that you must answer solely from the sworn
8 testimony produced during the trial and the exhibits admitted
9 under the rules of evidence by the Court.

10 Also, when I give you those final instructions that
11 you're to follow, the Court's charge to the jury, I'm going to
12 send a printed copy of those back to the jury room with you
13 when you retire to deliberate because when I'm giving you
14 those final instructions, I don't want you furiously taking
15 notes or trying to pay attention; I want you to listen to what
16 I'm saying and I want you to focus on what I'm saying. So you
17 will have your own printed copy of those to refer to after you
18 retire to the jury room. You're not going to have to worry
19 about taking notes or doing anything other than focusing on my
20 delivery of those final jury instructions to you.

21 So at that point you'll go back to the jury room, you'll
22 have a printed copy of the final instructions from the Court
23 to each of you, and you'll have a clean copy of the single
24 verdict form with the questions in it you're to answer. And
25 then you'll deliberate and answer those questions, and the

1 answers to those questions will constitute the jury's verdict
2 in this case.

3 I will cover more of this as we go forward, but I wanted
4 to give you a brief roadmap of how we're going to proceed.

5 And in that vein, I'll mention one more thing and then
6 I'll let you leave for lunch. I want you to understand as you
7 plan your week that I have found over my 10-plus years on the
8 bench here that folks in East Texas would rather work a long
9 day each day and be away from their families and their
10 businesses a shorter total number of days than if you worked a
11 short day each day.

12 Said another way, some places in some parts of the
13 country that would try this case would try it in two weeks,
14 but you'd start at 9:30 or 10:00 and quit about 4:00 in the
15 afternoon. I don't do it that way. Starting tomorrow, I'm
16 going to do my best to have you back in that jury box with
17 another witness coming to the witness stand at 8:30 in the
18 morning, and we're probably -- well, I'll just tell you this
19 right now. We're not going to stop at 5:00. We're probably
20 going to go to 5:30 or maybe 6:00. If we've had a witness
21 that's on the witness stand an hour-and-a-half and with 15
22 minutes to go and they're finished and it's 6:00, we may go
23 until 6:15 to get that witness off the witness stand and be
24 ready for the next witness.

25 So you can count on long days this week but, by the same

1 token, I'm going to do my best to make sure that it's just
2 this week and that it doesn't go longer. And so when you're
3 talking with your families and you're planning your travel,
4 plan it accordingly.

5 Make sure you check -- the other thing is, you've heard
6 that old expression that a convoy only moves as fast as its
7 slowest ship? Well we don't move until eight jurors are here
8 each morning. Some of you are from Marshall; some are not
9 from Marshall. There are six counties in this division that
10 we draw on for jurors. So check the weather, plan your travel
11 time, make sure that there's not anything that would keep you
12 from being here so we can all start by 8:30 each morning
13 starting tomorrow.

14 Plan to be in the jury room about 8:15. And there's
15 going to be coffee and there's going to be pastries and
16 there's going to be some kind of breakfast-type food in there
17 for you from the Clerk's Office, so make sure you are here so
18 that we can start at 8:30 each morning, and then we will go
19 till sometime 5:30 or 6:00 each day, in all likelihood. But
20 if we do that, we can finish this trial in a week, in all
21 likelihood. That's not a promise, but that's my best
22 estimate. But if we don't do that, we'll take most, if not
23 all, of next week to finish, and I don't want to handle it
24 that way.

25 There's not a right way and a wrong way. I have judge

1 friends that are in big metropolitan centers and the jury just
2 can't get downtown by 8:30 in the morning. We don't have that
3 issue. So we're going to take advantage of our issues, we're
4 going to make our days a little longer, but we're going to try
5 this case to conclusion in a shorter number of days so that
6 the overall interference with your schedules and your families
7 will be at least as much as we can minimize them.

8 All right, ladies and gentlemen. With those instructions
9 I'm going to excuse you to the jury room where lunch should be
10 waiting for you.

11 The jury is excused.

12 (Whereupon, the jury left the courtroom.)

13 THE COURT: Be seated, please.

14 Counsel, we're going to break for lunch. I'm going to
15 try to start at 1:00. That gives you just a little over 45
16 minutes.

17 I want to say this. I know on the Plaintiff's [sic] side
18 that your offices are directly next door, but that doesn't
19 mean I need to wait on you because you've left the building
20 and you have to come back through security. I waited about
21 five or 10 minutes before I came out this morning because
22 there was only one side of the lawyers in the courtroom. I
23 could have come out and started and made you parade in front
24 of the entire venire panel coming in late, but I didn't do
25 that.

1 So it's no problem with me if you want to go next door
2 when it's time to meet or confer, but I'm not going to wait on
3 you to do that. If you need to meet and confer there's a
4 conference room, there's a jury room downstairs, or you
5 certainly can leave the building, but keep up with your time.
6 Understand if you leave the building you're going to have to
7 go through security again. And I'm not going to habitually
8 wait on folks just because your office is next door or in
9 close proximity if you left the building.

10 Also, we met this morning in chambers and talked about an
11 objection to certain testimony where the Court expressed a lot
12 of questions. This had to do with deposition testimony about
13 Ericsson indicating they could care less on three different
14 occasions as reflected in some of the emails that have been
15 admitted with redactions covering that portion of those emails
16 and whether that same testimony could properly be proffered by
17 a live witness in light of the redactions that had been agreed
18 to and entered in the email portions of that evidence.

19 I indicated that I wanted you to meet and confer about
20 that and that if you had any kind of a mutually acceptable
21 reason on that I wanted to know about it. I'm going to let
22 you to continue to do that over the next 45 minutes, but
23 before I bring the jury in and give them my preliminary
24 instructions I need to know if there's been any agreement
25 that's been reached or if there's not any agreement that's

1 been reached, in which case I'll give you guidance on that
2 issue. The other issues that developed in disputes overnight
3 I have given you guidance on in chambers, principally with
4 demonstratives and other related matters.

5 Are there any questions?

6 MR. BAXTER: Not from the Defendants, Your Honor.

7 MR. WARD: Not from the Plaintiff, Your Honor.

8 THE COURT: All right. I'd like to see counsel I
9 met with this morning in chambers about 10 minutes till 1:00
10 so I can visit with you about your position on that objection
11 that I carried this morning and see if you've worked out
12 anything or if you haven't. Other than that, I'll bring the
13 jury back in at 1:00 and begin with my preliminary
14 instructions.

15 All right. With that understanding, the Court stands in
16 recess for lunch.

17 (Lunch recess.)

18 THE COURT: Be seated, please.

19 Counsel, before I bring the jury in and begin with my
20 preliminary jury instructions, I want to review a matter that
21 we took up this morning in chambers before jury selection. It
22 has to do with the dispute regarding proposed testimony from
23 Ms. Gerritse, who is I understand to be KPN's corporate
24 representative.

25 The dispute is that during pretrial various emails were

1 raised and discussed with the Court as a part of the proposed
2 pre-admitted exhibits. The parties raised various objections
3 as to certain inflammatory and other type language embedded in
4 the emails, and the Court instructed the parties to meet and
5 confer and see if they could not resolve those issues by way
6 of agreed-upon redactions.

7 One of the emails that was addressed in this manner had
8 to do with what's identified as Section 1.3 where the prior
9 testimony of this witness was that Ericsson has taken -- or
10 the prior email involving this witness was that Ericsson was
11 taking the firm position in the February 4 meeting that there
12 will be no compensation in 2019, and we heard this at least
13 three times repeated under the wording Ericsson couldn't care
14 less; is this understanding correct that, under the current
15 Ericsson proposal, there will be no compensation for 2019 and
16 is it correct that Ericsson couldn't care less about this?

17 That was the excerpt from the email that was raised among
18 other emails at pretrial.

19 Per the Court's instructions, as I noted, the parties met
20 and conferred, and they by agreement resolved the disputes as
21 to this email by agreeing to redact the sections that talk
22 about 'we heard at least three times Ericsson couldn't care
23 less.' There are two sections of this email where that
24 language is redacted by agreement.

25 The possibility of that same testimony being presented

1 other than through the emails that were raised at pretrial was
2 never discussed at pretrial. Neither party raised it. At
3 approximately 20 minutes until 6:00 p.m. yesterday evening,
4 KPN sent an unsolicited letter brief to the Court and to
5 Ericsson urging that their corporate representative be
6 entitled to testify to the same language that was redacted in
7 the emails that I've discussed, i.e., is this Ericsson
8 couldn't care less and that was communicated at least three
9 times.

10 That was taken up this morning in chambers before we went
11 on the record, and I heard fully from both sides on this
12 issue. I asked the parties or I requested the parties to meet
13 and confer about this and see if they could find some
14 resolution of their own crafting, and I've just been told
15 that, despite efforts, they have not been able to resolve this
16 issue.

17 Consequently, it falls to me, and here's the Court's
18 resolution. I'm going to permit the corporate representative
19 to testify to the redacted portions of the emails if she can
20 testify that she heard in person and knows of her own personal
21 knowledge that at least three times it was indicated by a
22 representative of Ericsson that they couldn't care less,
23 quote, unquote, about this issue.

24 However, I find that this should have been raised at the
25 pretrial conference. And if it wasn't raised at the pretrial

1 conference outside of the email issue and if it wasn't raised
2 at the pretrial conference about live testimony of a witness
3 covering the same thing, it should have been.

4 The redactions covering this were agreed upon.
5 Apparently from the time those agreed redactions were
6 submitted sometime shortly after pretrial was complete until
7 5:40 p.m. on the night before jury selection, KPN had not
8 heard from Ericsson -- excuse me. KPN had not communicated to
9 Ericsson that they wanted to go forward with live testimony of
10 what was, in fact, redacted per agreement previously.

11 Having considered the arguments of both sides, I find
12 that this subject matter is relevant to issues in the case.
13 Particularly, it relates to the issue of FRAND obligation and
14 the issue of willfulness. Therefore, I'm going to allow the
15 witness to testify to what was redacted in the emails. Again,
16 if she can do so based on her own personal knowledge.

17 However, I find that KPN has violated the Court's rules
18 in the pretrial order about meeting and conferring with the
19 opposing party; that while I don't impute any malicious intent
20 to KPN, I find that it effectively appears to be an ambush on
21 the eve of jury selection, and consequently I think the
22 failure to comply with the Court's instructions and rules on
23 disclosing issues to each other and meeting and conferring
24 with them -- over them and the lack of timeliness here, the
25 immediate proximity to jury selection when there's not a real

1 opportunity to otherwise prepare, all those factors lead me to
2 believe that an appropriate sanction should be imposed here
3 with regard to KPN, and I am going to delete 20 minutes of
4 designated trial time from the allocated 11 hours per side
5 from KPN. They will have 10 hours and 40 minutes to present
6 their evidence as opposed to 11 hours.

7 And I think that's reasonable in light of the entirety of
8 the circumstances here. If the material were not wholly
9 relevant in my view, I would probably have not let it in at
10 all. But I don't feel that its relevance can be ignored, but
11 I don't feel that KPN's failure to comply with the Court's
12 rules and clear instructions and their failure to do so in a
13 way that on its face appears to be a calculated surprise can
14 go unpunished.

15 So that's the Court's order with regard to that matter.
16 The other issues resolved in chambers this morning appear to
17 be resolved and without further dispute.

18 Okay. I'm prepared to bring the jury in and proceed with
19 the Court's preliminary instructions. Is there anything I
20 need to hear from either party on before we do that?

21 MR. STEVENSON: Nothing from Ericsson.

22 MS. WHITE: Nothing from KPN, Your Honor.

23 THE COURT: All right. And do I understand -- who
24 will be presenting opening statements for KPN?

25 MS. WHITE: I will, Your Honor.

1 THE COURT: And for Ericsson?

2 MR. STEVENSON: Ted Stevenson for Ericsson.

3 THE COURT: Okay. All right. Mr. Latham, please
4 bring in the jury.

5 (Whereupon, the jury entered the courtroom.)

6 THE COURT: Welcome back from lunch, ladies and
7 gentlemen. Please have a seat.

8 I now have some preliminary instructions that I want to
9 give you on the record before we start with the opening
10 statements from the competing parties and then get on to the
11 evidence.

12 You've now been sworn as the jurors in this case and, as
13 the jury, you are the sole judges of the facts, and as such,
14 you will decide and determine what all the facts are in this
15 case.

16 Now, as the judge, I'm going to give you instructions on
17 the law, both now and later throughout the trial. I will
18 decide any questions of law that arise during the trial and
19 I'll address any matters of evidence and procedure. I'm also
20 responsible for overseeing the flow of the evidence and
21 maintaining the decorum of the courtroom.

22 At the end of the evidence, I'll give you detailed
23 instructions about the law to apply in deciding this case, and
24 I'll then give you a list of questions that you're then to
25 answer. As I've mentioned to you, this list of questions is

1 called the verdict form, and your answers to those questions
2 will need to be unanimous and those unanimous answers to those
3 questions will constitute your verdict in this case.

4 Now, I want to briefly tell you what the case is about.
5 As you know, this is a patent case where there are allegations
6 of patent infringement, and I know that you saw the video this
7 morning produced by the Federal Judicial Center, but I need to
8 give you some additional instructions now and on the record
9 about a patent and how one is obtained.

10 Patents are either granted or denied by the United States
11 Patent and Trademark Office, which you'll hear referred to for
12 short throughout the trial as the PTO. You may hear it simply
13 called the Patent Office. The United States Patent and
14 Trademark Office is an agency of the United States government.
15 It's a part of the Department of Commerce.

16 Now, a valid United States patent gives the patentholder
17 the right for up to 20 years from the date the patent
18 application is filed to prevent others from making, using,
19 offering to sell, or selling the patented invention within the
20 United States or by importing it into the United States
21 without the patentholder's permission.

22 A patent is a form of property called intellectual
23 property, and like other forms of property, a patent can be
24 bought or sold. A violation of the patentholder's rights is
25 called infringement. The patentholder may try to enforce a

1 patent against persons it believes to be infringers by filing
2 a lawsuit in a United States District Court, and that's what
3 we have in this case.

4 The process of obtaining a patent is called patent
5 prosecution. To obtain a patent, one must first file an
6 application with the PTO. As I've noted, the PTO is an agency
7 of the United States government and employs trained examiners
8 who review applications for patents and other materials.

9 An application to the Patent Office includes within it
10 what is called a specification. The specification contains a
11 written description of the claimed invention telling what the
12 invention is, how it works, how to make it, and how to use it.
13 The specification concludes or ends with one or more numbered
14 sentences. These numbered sentences, ladies and gentlemen,
15 are called the patent claims.

16 When a patent is granted by the PTO, it is the claims of
17 the patent that define the boundaries of the patent's
18 protection and give notice to the public of those boundaries.
19 Patent claims may exist in two forms referred to as
20 independent claims or dependent claims.

21 An independent patent claim does not refer to any other
22 claim within the patent. It is independent, and it is not
23 necessary to look to any other claim to determine what an
24 independent claim covers. In other words, a dependent patent
25 claim refers to at least one other claim in the patent.

1 A dependent claim includes each of the limitations or
2 elements of that other claim or claims to which it refers or,
3 as we sometimes say, from which it depends, as well as those
4 additional limitations or elements recited within the
5 dependent claim itself. Therefore, to determine what a
6 dependent patent claim covers, it's necessary to look at both
7 the dependent claim itself and the independent claim or claims
8 from which it depends or to which it refers.

9 Now, the claims of the patents in this suit use the
10 word 'comprising'. Comprising means including or containing.
11 A claim that includes the word 'comprising' is not limited to
12 the methods or devices having only the elements that are
13 recited in the claim, but also covers other methods or devices
14 that add additional elements.

15 Let me give you an example. If you take a patent claim
16 that covers a table and the claim recites a table comprising a
17 table top, legs, and glue, the claim will cover any table that
18 contains these three structures even if it also contains other
19 structures such as leaves to expand the table top or wheels to
20 go on the ends of the legs. That's a simple example using the
21 word 'comprising' and what it means. In other words, it can
22 have other features in addition to those that are covered by
23 the claim -- covered by the patent.

24 Now, after the applicant files his or her application
25 with the PTO, an examiner from the Patent Office is assigned

1 and reviews the application to determine whether or not the
2 claims are patentable--that is to say, appropriate for patent
3 protection, and to decide whether or not the specification
4 adequately describes the invention that's claimed.

5 In examining a patent application, the examiner reviews
6 certain information about the state of the technology at the
7 time the application was filed. The Patent Office searches
8 for and reviews this type of information that's publicly
9 available or that might have been submitted by the applicant.
10 This type of information is called prior art. The examiner
11 reviews this prior art to determine whether or not the
12 invention claimed is truly an advance over the state of the
13 art at the time.

14 Prior art is defined by law, and I'm going to give you
15 specific instructions at a later time as to what constitutes
16 prior art. However, in general, prior art includes
17 information that demonstrates the state of the technology that
18 existed before the claimed invention was made or before the
19 application for a patent was filed.

20 Now, a patent contains within it a list of certain prior
21 art that the examiner has examined, and the items on this list
22 within the patent itself are called the cited references.
23 Now, after the prior art search and examination of the
24 application, the examiner informs the applicant in writing of
25 what the examiner has found and whether the examiner considers

1 any claim to be patentable, in which case it would be allowed,
2 and this writing from the examiner is called an office action.

3 Now, if the examiner rejects the claims, the applicant
4 has an opportunity to respond to the examiner to try to
5 persuade the examiner to allow the claims. The applicant also
6 has a chance to change or amend the claims or to submit new
7 claims, and the papers generated during these communications
8 back and forth between the examiner and the applicant are
9 called the prosecution history.

10 And this prosecution history, this process of
11 communicating in writing may go back and forth between the
12 applicant and the examiner for some time until the examiner is
13 satisfied that the application meets the requirements for a
14 patent and, in that case, the application issues as a United
15 States patent; or, in the alternative, if the examiner
16 ultimately concludes that the application should be rejected,
17 then no patent is issued. Sometimes patents are issued after
18 appeals within the Patent Office or to a court.

19 Now, the fact that the Patent Office grants a patent does
20 not necessarily mean that any invention claimed in the patent,
21 in fact, deserves the protection of a patent. While an issued
22 United States patent is presumed to be valid under the law, a
23 person accused of infringement has the right to assert and to
24 prove in federal court that the claimed invention in a patent
25 is invalid.

1 Now, it's your job as the jury to consider the evidence
2 presented by the parties and to determine independently and
3 for yourselves whether or not the Defendants have proven by
4 clear and convincing evidence that any asserted patent is
5 invalid. As you heard earlier, there are three asserted
6 patents in this case, and the Defendants claim that one of
7 those three patents is invalid. They do not claim that the
8 other two patents are invalid.

9 Now, to help you follow the evidence, I'm going to give
10 you a brief summary of the positions of the competing parties.

11 As you know, the party that brings a lawsuit, that files
12 the lawsuit, is called the Plaintiff. The Plaintiff in this
13 case is Koninklijke KPN NV, which you're going to hear
14 referred to simply as KPN, or you may hear them referred to
15 simply as the Plaintiff.

16 And as you know, the party or parties against whom a
17 lawsuit is filed or is brought are called the defendants. In
18 this case there are two Defendants, and they are
19 Telefonaktiebolaget LM Ericsson and Ericsson, Inc. And you're
20 going to hear these Defendants referred to jointly or
21 collectively throughout the trial as either the Defendants and
22 you'll also hear them referred to in that way simply as
23 Ericsson --

24 Now, as I told you during jury selection, this case
25 involves allegations of patent infringement brought by KPN

1 against Ericsson. And as I've already mentioned, there are
2 three United States patents at issue here that have been
3 asserted by KPN against Ericsson.

4 The first asserted patent in this case is United States
5 Patent No. 48,089. And as you know, patents are commonly
6 referred to by their last three digits, so in this case Patent
7 No. 48,089 is going to be referred to as the '089 Patent.

8 The second patent at issue in this case is United States
9 Patent 9,253,637, which you'll hear referred to as the '637,
10 or the '637 Patent.

11 The third patent at issue in this case is United States
12 Patent No. 8,881,235, which you'll hear referred to as the
13 '235, or the '235 Patent.

14 Now, these three patents, members of the jury,
15 collectively will be referred to at various times throughout
16 the case as either the asserted patents or the
17 patents-in-suit. When you hear those terms, it means all
18 three of these patents. And these patents-in-suit generally
19 relate to telecommunications networks.

20 Now, the Plaintiff KPN contends that the Defendants
21 Ericsson are willfully infringing certain claims of the
22 patents-in-suit by making, using, importing, or selling
23 products that include their patented technology. KPN also
24 includes that Ericsson has induced and continues to induce
25 infringement by others. And KPN contends that it's entitled

1 to money damages as a result of that infringement.

2 Over the course of the case, you'll learn more about
3 which claims are asserted against Ericsson. KPN alleges that
4 various Ericsson telecommunications network products infringe
5 KPN's patents. And the parties are going to refer throughout
6 the trial and you will perhaps hear me refer to these accused
7 products, these Ericsson telecommunication network products as
8 simply the accused products.

9 Now, the Ericsson Defendants deny that they are
10 infringing any of the three patents-in-suit asserted against
11 them by KPN, and the Ericsson Defendants contend that the
12 asserted claims of the patents-in-suit are invalid as
13 anticipated in the light of prior art, at least as to one of
14 the three patents.

15 Now, I know, ladies and gentlemen, there are various new
16 words and new concepts that have been thrown at you since you
17 appeared this morning for jury duty. I'm going to define a
18 lot of these for you as we go through these instructions. The
19 lawyers for both of the parties are going to address some of
20 them in their opening statements, which will be helpful to
21 you. The witnesses throughout the trial are going to help you
22 with their testimony to understand these words and concepts.
23 So please do not feel overwhelmed at this point. I know
24 that's natural, but I promise you it's all going to come
25 together as we go through the trial.

1 Now, one of your jobs in this case is to decide whether
2 or not the asserted claims of the three patents-in-suit have
3 been infringed, and you'll also be asked to decide whether or
4 not certain of the asserted claims are invalid. If you decide
5 that any claim from the patents-in-suit has been infringed by
6 the Defendants and that claim is not invalid, then you'll need
7 to decide whether or not that infringement has been willful.
8 You'll also need to decide what amount of money damages should
9 be awarded to the Plaintiff as compensation for that
10 infringement.

11 Now, my job in this case is to tell you what the law is,
12 to handle and address rulings on evidence and procedure, and
13 to oversee the conduct of the trial, and to maintain the
14 decorum of the courtroom.

15 In determining the law, ladies and gentlemen, it is
16 specifically my job to determine the meanings and
17 interpretation of any of the claim language from within the
18 asserted patents that needs to be interpreted or construed.
19 I've already determined the meanings of certain language from
20 the claims of the patents-in-suit, and you must accept those
21 meanings that I have already reached and that I will give you
22 when you decide whether any particular claim has or has not
23 been infringed, and when you decide whether or not any claim
24 is or is not invalid. And you're going to be given a document
25 in a few minutes that reflects these constructions or

1 interpretations of certain claim language that the Court has
2 already reached.

3 Now, for any language within the asserted claims where I
4 have not provided you with a construction or definition, you
5 should apply the plain and ordinary meaning of that language
6 as understood by a person of ordinary skill in the art. But
7 if I've provided you with a definition for any of the claim
8 language, you must apply my definition to that language and
9 those terms throughout the case.

10 However, please understand that any interpretation of the
11 language from the claims by the Court is not to be taken by
12 you as an indication that the Court has any personal opinion
13 regarding the issues of infringement and invalidity because
14 those issues, ladies and gentlemen, are yours and yours to
15 decide in this trial.

16 I'll provide you with more detailed instructions on the
17 meaning of the claims before you retire to deliberate and
18 reach your verdict.

19 In deciding the issues that are before you, you'll be
20 asked to consider specific legal rules. And I'll give you an
21 overview of those rules now, and then at the conclusion of the
22 case, I'll give you more detailed instructions.

23 The first issue that you're going to be asked to decide
24 is whether Ericsson has infringed any of the asserted claims
25 of the three patents-in-suit.

1 Infringement, ladies and gentlemen, is assessed on a
2 claim-by-claim basis, and the Plaintiff must show by a
3 preponderance of the evidence that a claim has been infringed.
4 Therefore, there can be infringement as to one claim but no
5 infringement as to another asserted claim.

6 And there are also a few different ways that a patent can
7 be infringed, and I'll explain the requirements for each of
8 these types of infringement to you in detail at the conclusion
9 of the case. But, in general, a Defendant may infringe the
10 asserted patents by making, using, selling, or offering for
11 sale in the United States or importing into the United States
12 a product meeting all of the elements or requirements of a
13 claim from the asserted patents without the patentholder's
14 permission.

15 Now, the second issue that you're going to be asked to
16 decide is whether the asserted patents are invalid.
17 Invalidity is a defense to infringement. And even though the
18 United States Patent and Trademark Office has allowed the
19 claims and even though an issued United States patent is
20 presumed to be valid, you, the jury, must decide whether those
21 asserted claims are invalid after hearing all of the evidence
22 presented during this case. You may find a patent claim to be
23 invalid for several reasons, including because it claims
24 subject matter that is not new.

25 For a patent claim to be invalid because it is not new,

1 the asserting party, in this case the Defendant Ericsson, must
2 show by clear and convincing evidence that all the elements or
3 limitations of that claim are sufficiently described in a
4 single previously printed publication or patent. If a claim
5 is not new, ladies and gentlemen, it is said to be anticipated
6 by the prior art.

7 And if you decide that any claim of the patents-in-suit
8 has been infringed but is not invalid, you'll then need to
9 decide what amount of money damages should be awarded to the
10 Plaintiff KPN to compensate it for that infringement that you
11 have found. A damages award should put the Plaintiff KPN in
12 approximately the same financial position as it would have
13 been in had the infringement not occurred, but in no event may
14 an award be less than what KPN would have received if it had
15 been paid a reasonable royalty for the use of its patent. And
16 I'll instruct you on the meaning of a reasonable royalty at a
17 later time.

18 Now, the damages that you might award, if any, again they
19 are meant to compensate the patentholder, and they are not
20 meant to punish the Defendants. And you may not include in
21 any damages award that you might make an additional amount as
22 a fine or a penalty above what is necessary to fully and
23 completely compensate the patentholder for the infringement.
24 As I say, I'll give you more detailed instructions on the
25 calculation of damages at the conclusion of the case.

1 You should be aware, however, that the fact that I'm
2 instructing you on damages does not mean that I believe KPN is
3 or is not entitled to recover damages. Again, that is an
4 issue that you and you alone will decide.

5 Now, you're going to be hearing from a number of
6 witnesses over the course of this trial, ladies and gentlemen,
7 and I want you to keep an open mind while you're listening to
8 the evidence and not decide any of the facts until you've
9 heard all the evidence. That's important. And while the
10 witnesses are testifying, remember that you the jury are going
11 to have to decide the degree of credibility and believability
12 to allocate to each of the witnesses and the testimony and
13 evidence that they give. So while the witnesses are
14 testifying, you should be asking yourselves things like this:
15 Does the witness impress you as being truthful? Does he or
16 she have a reason not to tell the truth? Does he or she have
17 any personal interest in the outcome of the case? Does the
18 witness seem to have a good memory? And did he or she have an
19 opportunity and ability to observe accurately the things that
20 they've testified about? Does the witness appear to
21 understand the questions clearly and answer them directly?
22 And, of course, does the witness' testimony differ from the
23 testimony of any other witness? And if it does differ, how
24 does it differ? And these are some of the kinds of things you
25 should be thinking about while you're listening to each of the

1 witnesses who will testify in this case.

2 I also want to talk to you briefly at this point about
3 expert witnesses. When knowledge of a technical subject may
4 be helpful to the jury, a person who has special training and
5 experience in that particular field, we refer to them as an
6 expert witness, is permitted to testify to you about his or
7 her opinions on those technical matters. However, ladies
8 and gentlemen, you're not required to accept any expert's
9 opinion or any other witness' opinion, for that matter. It's
10 up to you to decide whether or not you believe an expert
11 witness or any witness, and whether you believe what they're
12 telling you is correct or incorrect, whether or not you want
13 to believe it or not believe it, and if you do believe it,
14 what amount of weight do you want to give to that testimony.

15 And I anticipate that there are going to be expert
16 witnesses testifying in support of both sides in this case,
17 and there will be competing opinions given in their testimony.
18 But when that happens, it's going to be up to you to listen to
19 their qualifications, and when they give an opinion on a
20 matter and explain the basis for that opinion, you will have
21 to evaluate what they say, whether you believe it, and to what
22 degree, if any, that you want to give that opinion weight.

23 Remember, ladies and gentlemen, judging and evaluating
24 the credibility and the believability of each and every
25 witness is an important part of your job as jurors.

1 Now, during the course of the trial, it's possible that
2 there will be testimony from one or more witnesses that are
3 going to be presented to you through what we call a
4 deposition. In trials like this, it's difficult to get every
5 person in the court at the same time so they can testify live
6 from the witness stand. So before the trial begins, the
7 lawyers for both sides take the depositions of the witnesses.

8 In a deposition, a court reporter is present, the witness
9 is present, the witness is sworn and placed under oath, and
10 the lawyers for both the Plaintiff and the Defendants question
11 that witness, and those sworn answers to those questions from
12 the witness are taken down and recorded along with the
13 questions from the lawyers. And in many instances, those
14 questions and answers taken down at that deposition are video
15 recorded.

16 Now, when those witnesses cannot be here and present to
17 testify during the trial, it's possible that their testimony
18 will be played back to you in the form of those video
19 recordings or portions of those video recordings that were
20 taken and made during their depositions.

21 Let me also explain this to you, ladies and gentlemen.
22 The usual deposition in a case like this lasts up to seven
23 hours. There may be -- I'm just going to give you an example.
24 There may be a witness who testifies by deposition because
25 they can't be here in person, and maybe they were deposed and

1 everything they were asked and that they answered was recorded
2 over seven hours. It may be there's 15 minutes of that seven
3 hours that the parties believe is important for you to hear,
4 and if that person were present and called to the witness
5 stand, they'd be asked 15 minutes' worth of those questions.

6 But to avoid all of us having to listen to seven hours to
7 get 15 minutes' worth of testimony, the lawyers and the
8 parties are able to edit and slice and reconnect those
9 sections of those video recordings so that they can present
10 just the relevant portions that they intend for us to hear and
11 not the entirety of the perhaps seven-hour-long deposition.

12 So if you're seeing a witness testify during this trial
13 by deposition, it's entirely possible that you will notice
14 that there are places where, when it's presented, it looks
15 like it's edited or clipped. That's because it has been. And
16 you may hear different voices because a different lawyer is
17 now asking questions. That's probably because it is a
18 different lawyer asking those questions.

19 If you're presented with a deposition witness in this
20 case, don't focus on those kind of small irregularities; focus
21 on the questions asked and the answers that that witness gave
22 under oath. The substance of the questions and the answers,
23 not the presentation of it in case it has slight
24 irregularities in it, because to avoid that we would have to
25 listen to seven hours of deposition video recording to get 15

1 minutes' worth of evidence, and nobody wants to do that, I
2 promise you. But be aware that that may be presented, and if
3 it is presented in that way, that's why it's presented in that
4 way.

5 I want you also to understand that if there are witnesses
6 who do not testify live but they are presented through
7 deposition, that they were sworn and placed under oath when
8 they were asked the questions that you'll see and hear, and
9 the answers they gave, are subject to the same rules as any
10 live witness in open court. Therefore, their deposition
11 testimony is entitled to the same consideration by you insofar
12 as that's possible and is to be judged as to the credibility
13 and believability of the witness and you are to decide what
14 amount of weight, if any, to give to their testimony just as
15 you would with any live witness who will appear during this
16 trial.

17 Also, ladies and gentlemen, I want to let you know that
18 throughout the course of the trial you're going to see several
19 documents. The Court has already taken up with the parties
20 those documents and their admissibility under the Federal
21 Rules of Evidence.

22 If you are presented with an exhibit during this trial,
23 that means I've already reviewed it and determined that it's
24 admissible under the rules of this court. That saves the
25 lawyers from having to make a presentation in open court,

1 present their reasons, let me hear the arguments against, and
2 let me decide while you're sitting here whether that document
3 should be an exhibit in the case or not. I've already done
4 that in advance, and the lawyers and I, I promise you, we have
5 spent hours, in fact sometimes days, going through this
6 material before you were selected so that we can save having
7 to do all of that during the trial.

8 Now, some of the documents that have been pre-admitted by
9 the Court that are going to be used during the trial as
10 exhibits and that you're going to see may well have redactions
11 in them, sections where some of the language in that document
12 has been blacked out. If there are redactions in any
13 documents shown to you during the trial, it's because I have
14 ordered those redactions.

15 You are not to speculate or guess what's covered up by
16 the redactions. You're not to speculate or guess why the
17 Court ordered those redactions to be there. In fact, you're
18 to focus on the part you can read. You are not to focus on
19 the part that's been blacked out or redacted that you can't
20 read. Pay attention to what's shown to you; don't get focused
21 on things that you can't read that have been redacted. Just
22 know if those redactions are there, it's because I determined
23 that they were appropriate and I ordered them.

24 Now, during the course of the trial it's possible that
25 the lawyers are going to make certain objections. And when

1 they make objections, I will rule on those objections. And
2 it's the duty of an attorney for either side of the case to
3 object when the other side offers testimony or evidence that
4 the attorney believes is not proper under the rules of the
5 Court and the Rules of Evidence.

6 If I should sustain an objection to a question addressed
7 to a witness, then you must disregard that question entirely.
8 The witness is not going answer it, and you should draw no
9 inference from the wording of the question and you should not
10 speculate about what the witness might have said if I had
11 allowed them to answer the question. In other words, if I
12 sustain an objection to a question addressed to the witness,
13 then you should disregard the question and consider that it's
14 never been asked in the first place.

15 However, if I overrule an objection addressed to a
16 question from a witness during the trial, then you should hear
17 the witness give the answer, if I've overruled the objection,
18 and you should consider the question and the answer just as if
19 no objection had been made, and you should not let the
20 objection that was made detract from your considering both the
21 question and the answer. Again, if I overrule the objection,
22 just consider the question and the answer as if no objection
23 had been made.

24 Now, by me allowing the testimony or other evidence to be
25 introduced over the objection of an attorney, I want you to

1 understand that the Court does not in doing that express any
2 independent -- any opinion or any amount of weight is
3 indicated with regard to the effect of that evidence. As I've
4 said before, you're the sole judges of the credibility and
5 believability of the witnesses and what effect and weight, if
6 any, to give to the evidence. So if I should overrule an
7 objection don't consider that as a part of evaluating the
8 credibility or the believability of the witness and their
9 evidence.

10 Now, as I said, before jury selection today during
11 pretrial hearings that the Court had with counsel for the
12 parties, we worked many, many hours to get through most of
13 these disputes in advance of the trial so that you would not
14 have to sit here and listen to those and possibly be confused
15 or misdirected by some of those other issues.

16 And I want to compliment the parties and their counsel
17 for working diligently with the Court to get through those.
18 And I promise you, even though you may not fully appreciate it
19 at this point, we have saved many, many hours of you sitting
20 in those chairs listening to things that have already been
21 dealt with to streamline the process.

22 And this means if the parties offer you an exhibit in the
23 case that I've already determined that it's admissible and
24 I've deemed it pre-admitted for use during this trial, that
25 means they don't have to formally offer it on the record, draw

1 an objection, let me hear the different arguments for and
2 against, and rule on whether it's admissible. I've already
3 done that, and that's going save us a lot of time as we go
4 through this trial.

5 All that being said, it's still possible objections are
6 going to arise during the course of the trial. And when they
7 do, I'll rule on those objections, either overruling them or
8 sustaining them.

9 You should also know, ladies and gentlemen, that the law
10 of the United States permits a United States District Judge to
11 comment to the jury regarding the evidence in a case, but such
12 comments from the judge on the evidence are only expressions
13 of the judge's opinion and the jury may disregard those
14 comments in their entirety because, as I've told you, you, the
15 jury, are the sole judges of the facts, you are the sole
16 judges of the credibility and believability of the witnesses,
17 and you are the sole judges as to how much, if any, weight to
18 give to the testimony that's presented during this trial.

19 And even though the law permits me to comment to you on
20 the evidence in this case, as I indicated earlier, I'm going
21 to try very hard not to comment on any of the evidence
22 throughout the trial because, as I've said, evaluating that
23 testimony and evidence is your job, not mine.

24 Now, the court reporter in front of me, Mr. McRoberts, is
25 going to take down everything that's said during this trial.

1 As a matter of fact, he's taken down everything that's been
2 said in open court since you walked in the courtroom this
3 morning. But the written transcript of everything that's said
4 is not going to be available to you when you have heard all
5 the evidence and you retire to the jury room to deliberate on
6 the verdict. That means, ladies and gentlemen, you're going
7 to have to rely on your memories of the evidence that's been
8 presented during the trial.

9 In a moment, you're each going to be given a juror
10 notebook, and in that notebook you're going to find blank
11 pages and a legal pad where you can take notes during the
12 trial, if you choose to. It's up to each of you to decide
13 whether you want to take notes during the course of the trial,
14 and if you do, how detailed or not detailed you want those
15 notes to be.

16 But, remember, if you choose to take notes over the
17 course of the trial, those notes are for your own personal use
18 only. You still have to rely on your memory of the evidence
19 that's presented during the trial, which is why you should be
20 paying close attention to the testimony of each and every
21 witness.

22 And you should not abandon your own recollection during
23 your deliberations because somebody else's notes indicate
24 something different. Any notes are meant to refresh your
25 recollection and that's the only reason a juror should be

1 keeping them.

2 I'm now going to ask our Court Security Officer to pass
3 out these juror notebooks to the members of the jury.

4 (Pause in proceedings.)

5 THE COURT: In these notebooks, ladies and
6 gentlemen, you'll see that you each have a copy of the three
7 asserted patents in this case. You'll also see that there is
8 a section or an entry behind the patents themselves where the
9 language from the claims that the Court has interpreted or
10 construed is included for you. You'll see on one side the
11 language from the claims that the parties asked the Court to
12 construe or interpret and you'll see the construction or
13 interpretation corresponding on the other side of the page
14 that the Court's adopted. Again, you must apply my
15 constructions or definitions to that claim language throughout
16 the trial.

17 Behind that or following that, you should find a section
18 of witness pages, and I've asked that those be tabbed so that
19 you can find the respective witnesses without any undue delay
20 while they're being called and presented during the trial.

21 And on each of those witness pages, there should be a
22 head-and-shoulders photograph of the witness with their name
23 below it and then space for note-taking if you choose to do
24 it. I've often found that a jury being able to go back and
25 look at the picture of who gave the testimony after trial can

1 be helpful, so that's why that's done that way.

2 And then behind those tabbed witness pages, you should
3 find a new legal pad that you can take additional notes on and
4 there should be, I believe, in the front pocket of each of
5 those notebooks an additional pen or a pen for you to use in
6 case you don't have one with you. Again, that's if you choose
7 to take notes, and that's up to you individually.

8 Also, ladies and gentlemen, these notebooks should stay
9 in your possession throughout the trial. They are not to be
10 left laying around where somebody not on the jury could pick
11 one up and look at them. They should either be in your
12 personal possession when you're in the courtroom. If we call
13 a recess or a break for lunch or at the end of the day, then
14 you should take them with you to the jury room when you go
15 back to the jury room and at the end of the day leave them on
16 the table in the jury room and pick them up the next morning.

17 Now, the one exception to that is there may be times
18 during the trial when we have a short recess, and if I think
19 we're going to be just a few minutes in a short recess, 10 or
20 12 minutes, I may say, ladies and gentlemen, you're excused
21 for recess, but you may leave your notebooks in your chairs.
22 And in that case, just close them and leave them in the chair
23 where you're sitting.

24 I'll do that if you're going to be out of the jury box
25 for a short period of time. If it's going to be longer than

1 that, I'm going to ask you to take them to the jury room with
2 you. Again, they should not be where anybody other than you
3 have access to your own notebooks.

4 Now, in a moment we're going to hear opening statements
5 from the lawyers for the parties. These opening statements,
6 as I mentioned earlier, are designed to give you a road map of
7 what each side expects to offer during the course of the trial
8 by way of evidence. And as I told you again already, what the
9 lawyers tell you in this case is not evidence. The evidence
10 is the sworn testimony from the witnesses from the witness
11 stand who are placed under oath and subject to cross
12 examination, and the evidence in this case are those exhibits
13 which the Court has deemed to be admissible under the Federal
14 Rules of Evidence and procedure and which the Court has
15 admitted into evidence in this case.

16 The admitted exhibits and the sworn testimony of the
17 witnesses, that's the sole universe of the evidence in this
18 case; not what the lawyers tell you or the arguments that they
19 may make.

20 Now, what the lawyers tell you and the arguments that
21 they present are meant to give you their impressions of the
22 evidence, and they have a duty to point out to you what they
23 believe the evidence will show. But just remember, what they
24 tell you is not evidence.

25 Now, after the parties through their counsel have

1 presented their opening statements, then we'll proceed to the
2 Plaintiff's case in chief. And as I told you before lunch,
3 the Plaintiff will then call its witnesses and they'll
4 testify, and the Defense counsel will be able to cross-examine
5 those witnesses. And when we've gone through all the
6 Plaintiff's witnesses, then the Plaintiff will rest their case
7 in chief.

8 And then we'll turn to the Defendants, and they will put
9 on their evidence in the Defendants' case in chief. In the
10 same manner, the Defendants' witnesses will be called and will
11 testify on direct examination from questions asked by Defense
12 counsel, and then Plaintiff's counsel will cross-examine the
13 Defense witnesses, just the reverse of what happened in the
14 Plaintiff's case in chief. And when the Defendants have
15 called all their witnesses and put on their case in chief,
16 they will rest.

17 And as I mentioned before lunch, the Plaintiff, because
18 it has the burden of proof, may have an opportunity to call or
19 will have an opportunity to call rebuttal witnesses, if they
20 choose to. We'll determine at that time whether or not the
21 Plaintiff's going to call any rebuttal witnesses.

22 If the Plaintiff does, they'll testify under oath,
23 they'll present their evidence on direct examination, they'll
24 be cross-examined by Defense counsel. And when any rebuttal
25 witnesses are finished, that will complete the Plaintiff's

1 rebuttal case. When that happens, if there are rebuttal
2 witnesses or if there aren't rebuttal witnesses when the
3 Defendants' case in chief has ended, that will complete all
4 the evidence in this case.

5 After you've heard all the evidence in this case, then
6 I'll give you my final instructions on the law that you are to
7 apply to that evidence in answering the questions in the
8 verdict form. Those final instructions from me to you is
9 called or is often called the Court's charge to the jury. And
10 then once I've given you my final jury instructions, you'll
11 then hear closing arguments from the Plaintiff's counsel and
12 the Defendants' counsel. And then when you've heard closing
13 arguments, I'll direct you to retire to the jury room and to
14 deliberate on your verdict.

15 Now, I told you before lunch that it's important that you
16 not communicate with anybody about this case or any of the
17 evidence or any of the testimony, and I want you to understand
18 that applies to the eight of you as well. You are not to
19 discuss the evidence in this case among each other until that
20 point in time when you've heard all the evidence, you've
21 received my final instructions, you've heard closing arguments
22 from the parties, and then I tell you to retire and deliberate
23 in the jury room on your verdict. That is an inflection
24 point. That's a point in time where I like to think of a
25 light switch being turned on. At that point when you retire

1 to deliberate, but not before, you go from not being able to
2 discuss the evidence with each other to being required to
3 discuss the evidence with each other while you deliberate in
4 attempt to reach a unanimous decision on how to answer the
5 questions that are going to be in the verdict form.

6 So until you've heard all the evidence, until you've
7 heard my final instructions on the law, and you've heard
8 closing arguments from the attorneys, you must not discuss the
9 case with each other in any way. But at that point but not
10 before that point, but at that point when you retire to
11 deliberate, you go to a different posture which is that you're
12 required to discuss it among yourselves in an attempt to reach
13 a unanimous decision on the verdict.

14 Also I want to mention one more time, because I think
15 it's important, during the course of this trial you're going
16 run into or be in close contact with some of the people who
17 are trying this case, either the lawyers or their support
18 staff. Most of the people in that gallery right now are
19 connected with one side or the other of this case. There are
20 not many unbiased observers out there.

21 So if you run into any of these folks, and this is a
22 small courthouse by federal court standards, when they don't
23 speak, when they don't smile, when they don't act friendly,
24 don't hold it against them, don't think they're being rude;
25 simply understand that they're following my instructions,

1 which all go back to that one basic fundamental premise that
2 the sole source of the information that you should have to
3 draw upon to answer the questions in the verdict form must be
4 limited to the sworn testimony from the witnesses in open
5 court and subject to cross-examination and those exhibits that
6 the Court has determined and ruled are admissible as evidence
7 in this case. That's it; no more.

8 So that's why you have all these instructions about not
9 doing research. That's why you have these instructions about
10 not talking to anybody, including each other, until all the
11 evidence is in. That's why you have these instructions about
12 nobody involved in either side of this trial having a
13 conversation or being friendly or speaking to you during the
14 course of the trial. They all relate back to that one
15 important fundamental premise.

16 So with that, ladies and gentlemen, we will proceed to
17 hear opening statements from the attorneys for the parties at
18 this time, and we'll begin with the Plaintiff's opening
19 statement.

20 Ms. White, you may address the jury on behalf of the
21 Plaintiff. Would you like a warning on your time?

22 MS. WHITE: Please, Your Honor. Five minutes?

23 THE COURT: I'll warn you when you have five minutes
24 remaining. You may proceed.

25 MS. WHITE: Thank you, Your Honor.

1 You know my name, but please let me introduce myself to
2 you. I'm Lexie White. I'm part of the club that's guilty of
3 being born outside of Texas, but I've lived in Texas for the
4 last 17 years with my husband and our four children. And I am
5 privileged to represent KPN in this case.

6 This case involves decisions. We all make them every
7 day. Companies like KPN and Ericsson make them, too. The
8 evidence will show you that Ericsson made a decision. That
9 decision was to ignore KPN's property rights. KPN had to make
10 decision, too--do nothing or stand up for itself. It chose to
11 stand up for itself, and that is why we're here.

12 The evidence will show that KPN and Ericsson had a long
13 history of licensing each other's patents. However, you'll
14 learn that KPN stopped purchasing as much equipment from
15 Ericsson, and whether by coincidence or as a result, Ericsson
16 began ignoring KPN's substantial patent property rights.
17 That's why we're here. Ericsson is using KPN's property and
18 they're refusing to pay for it.

19 Now, at the end of this week, you-all will have some
20 decisions to make, and those decisions will be based on the
21 evidence that's presented to you. In the next 25 minutes, I'm
22 going to describe the evidence that I expect you'll see and
23 hear. That evidence includes the history between the parties,
24 the patents that we believe Ericsson is using without
25 permission, and the damages that we believe it owes for that

1 unauthorized use.

2 First, the history. These parties actually have a
3 relationship that dates back 100 years. I don't have time to
4 cover all of that. But for their patents, you will learn that
5 first in 2004, then again in 2010, and then again in 2014, KPN
6 and Ericsson entered into these patent license agreements.
7 Each one gave Ericsson permission to use for a limited period
8 of time all of KPN's patents, eventually including each of the
9 three patents at issue in this case. The licenses also gave
10 KPN the right to use Ericsson's patents. That's what's called
11 a cross license. I give you permission to use my patents, you
12 give me permission to use yours in return.

13 Ericsson also paid on top of that cross license \$48
14 million worth of vouchers that KPN used to purchase Ericsson's
15 equipment. You'll learn that the parties did a lot of
16 business together back then. KPN purchased very expensive
17 equipment from Ericsson using these vouchers like a pre-paid
18 credit card. KPN needed Ericsson's equipment to run its
19 business because, as you've heard, KPN is a telecommunication
20 network operator. We are kind of like the AT&T of the
21 Netherlands. We have 4 million customers. We employ about
22 25,000 people. Now, that makes us a whole, whole lot smaller
23 than AT&T whose services reach a quarter billion people. But
24 we're in the same industry. Our customers are people like you
25 and me.

1 Ericsson's customers are huge companies because Ericsson
2 is one of just three vendors in the world that make all of the
3 cell towers and base stations that are used to power a
4 wireless network. Around 40 percent, almost half of all of
5 the cellular and network traffic in the world, goes through a
6 piece of Ericsson's equipment. So as you might imagine,
7 Ericsson sells to all the big players--AT&T and Verizon and
8 even some small ones like us.

9 But you will hear that around the time that KPN began
10 dealing with one of Ericsson's competitors instead, Ericsson
11 began dealing with Ericsson's patent property rights very
12 differently. There are a lot of emails exchanged during that
13 time period, and we'll show you some of them.

14 Ms. Gerritse, who's actually in the courtroom from KPN's
15 headquarters in the Netherlands --

16 Could you raise your hand, Ms. Gerritse?

17 -- she invited Ericsson in January 2017 to renew its
18 license. She offered -- as you can see on the bottom there
19 what is highlighted, she offered to meet with them in Sweden
20 which is where Ericsson is headquartered and where all the
21 business executives that made this decision are located.
22 Ericsson responded two months later that they should pick up
23 the negotiations after the summer.

24 And you'll see that that pattern continued all year as
25 KPN on the top would reach out, sometimes repeatedly, and

1 Ericsson always wanted more time. Sometimes it wouldn't
2 respond for weeks or even months. Then when it would respond,
3 it had a lot of questions which we answered. Then it wanted
4 more time or it would go silent again, or it would ask the
5 same questions we already answered, which we'd answer again.

6 And you will see and hear about the mounting frustration
7 as the weeks turned to months, the months to many months, and
8 then years, four years of negotiating, circling around the
9 same issues, new questions, same questions, new excuses and
10 delay.

11 Ultimately instead of renewing this license agreement
12 like it had for more than a decade, you will hear that
13 Ericsson refused to get KPN's permission to use any of KPN's
14 patents, not a single one. Ericsson's company witnesses have
15 maintained in this case that KPN's entire portfolio of 1500
16 patents has zero value to Ericsson, and you won't see any
17 evidence that Ericsson suddenly changed its products to avoid
18 any of KPN's patents.

19 Patent rights, as you heard, are property rights just
20 like a deed to a piece of property. The evidence will show
21 that Ericsson knows this is our property, they've had our
22 patents, they've had four years to study them, take a license,
23 or stop using them. Instead, Ericsson wants to stay on our
24 property for free. They won't pay to renew the license and
25 they won't leave. And that's why we're here. And we need

1 your help.

2 The first question you're going to be asked is the
3 question of infringement. So let's talk about the patents
4 that Ericsson is infringing.

5 In the time we have, my team and I will talk to you about
6 three of KPN's patents that Ericsson is, we believe, using
7 without permission.

8 The first is the '089 Patent, and our first witness is
9 Ms. Lia Gerritse. She worked directly with the inventors to
10 file the application that led the U.S. Patent Office to grant
11 what is now the '089 Patent. You will hear that KPN spends
12 between 300 and half a billion dollars every year on research
13 and development. We do this to protect our property and to
14 prosper in business. Both of those things help KPN to be
15 profitable and to deliver a better customer experience.

16 Ms. Gerritse is part of the department that works with
17 the inventors, including the '089 inventors here. And what
18 this patent does is really pretty neat, because one of the
19 most critical challenges for a large network operator like an
20 AT&T or a Verizon is how to monitor the network, especially
21 over a large area. Is there a coverage hold or a radio
22 link-down?

23 Think of the little bars on your cell phone. Well,
24 before KPN's patent, network operators were forced to do this
25 the old-fashioned way--by literally sticking someone in a car

1 and having them drive all over the coverage area. Anyone
2 remember these commercials, Can you hear me now? Can you hear
3 me now?

4 Well, KPN's '089 Patent gave network operators a new
5 option. KPN invented a way to arrange the network, a network
6 configuration that would allow all of the different cellular
7 devices that are already interacting with the network to also
8 collect measurements of signal or service quality across
9 different networks that they are connected to. You'll see
10 multiple figures in the patent showing the different ways it
11 can be configured or arranged. But the key point is that the
12 network is configured to receive these measurements without
13 anyone getting behind the wheel to drive-test all over the
14 network. It was a new way of solving a problem, a big costly
15 problem, especially for the big network providers like AT&T
16 who are Ericsson's biggest customers.

17 You will see that Ericsson touts the benefits of KPN's
18 invention when it's selling its products to customers like
19 AT&T. Here's a document that we found in Ericsson's internal
20 files. Ericsson describes its products as providing a remote
21 method to use for troubleshooting and verification of the
22 radio network instead of using traditional drive tests. This
23 should make such activities simpler and cheaper. That's what
24 Ericsson said about this technology before they were sued.

25 Now they say the technology is worthless, it's not used

1 by anyone. You-all will be the judges of the credibility of
2 the witnesses. You can weigh what they say before they're
3 sued with what they say after they're sued. I think the
4 evidence will show they are saying different things.

5 You will also see that Ericsson incorporated the '089
6 technology into the network equipment that it sells, and they
7 sometimes refer to it as MDT. It stands for minimization of
8 drive tests.

9 You will hear from our second witness, Doctor
10 Mangione-Smith. He is a Ph.D. research engineer and a former
11 engineering and computer science professor at UCLA. He will
12 compare the system that Ericsson sells to each asserted patent
13 claim element-by-element. This testimony will be
14 time-consuming and technical. I ask you to bear with us.

15 Ericsson has denied infringing any claim, so we have to
16 prove each one one-by-one or they'll say we didn't meet our
17 burden of demonstrating that it's more probable than not that
18 Ericsson is infringing.

19 Now, Ericsson will have an opportunity to call its own
20 experts and witnesses in, and I expect them to deny infringing
21 any of the claims. I don't know everything you will hear, but
22 one dispute that you will probably hear is whether the patent
23 is limited to one example that the patent gives where a 3G
24 network, for instance, is measuring a 4G network.

25 I think you will hear that a network is also understood

1 to include an individual base station with a lot of different
2 cell phones or cellular devices connected to it. But that's a
3 dispute that you're going to hear. They say it's 3G to 4G.
4 We say it also includes cell to cell.

5 You may also hear Ericsson say, well, our customers
6 aren't using the '089 technology. We believe the evidence
7 will show that's wrong, but I want to be very clear about one
8 thing: We are not accusing Ericsson's customers in this case.
9 That's why you don't see AT&T or Verizon sitting here. We
10 accuse Ericsson's products, the system of hardware or software
11 that Ericsson sells. You will see it is the system that is
12 described in the patent claims that we're asserting here.

13 But I think you're going to hear Ericsson talk about
14 these two words down here in the claim, 'configured to'.
15 Ericsson says its products are not configured to obtain the
16 network measurements described in the patent. You'll see the
17 parties agreed to a meaning for this term, and it's in your
18 jury notebook. It says plain and ordinary meaning, not merely
19 capable of.

20 Ericsson will say that its products don't meet this
21 requirement because they're merely capable of infringing, and
22 the reason they give is they say the users have to turn them
23 on, activate them, take certain steps to use them.

24 The way I think about the position that you'll hear is
25 it's kind of like saying, I can't violate a patent on a

1 computer designed to send and receive email. Even though the
2 computer has all the specialized software preinstalled
3 configured to do just that, send and receive email, Ericsson
4 would say that can't violate the email patent; the user has to
5 turn it on.

6 The evidence will show that makes no sense. The computer
7 is not a blank slate; it's configured to send and receive
8 email. It just has to be turned on. We believe the evidence
9 here will show Ericsson is not selling a blank slate.

10 Doctor Mangione-Smith looked at the internal source code
11 and technical documents for Ericsson's products. You will
12 hear that he found something called the M 1 report which is
13 configured to tell a network what the '089 Patent describes,
14 how strong the signal is, where the device measuring the
15 signal is located.

16 He also found code configured to tell devices out in the
17 network to go and take measurements, create reports, and send
18 them back to the network. That's actually what the '089
19 Patent describes. Ericsson designed its product specifically
20 to perform these functions shown here in their own internal
21 documents, not to be a blank slate, not to be merely capable,
22 but to be configured as the '089 describes.

23 And you'll see why, why Ericsson is giving its customers
24 more than a blank hard drive with no software -- because
25 Ericsson's customers demand it. AT&T, Ericsson's biggest,

1 most important customer, listed minimization of drive testing
2 as a high-1 priority. That's just one step below critical.
3 And you will see Ericsson not only assured AT&T that MDT would
4 be included in what it was trying to sell them, Ericsson
5 actually proved to AT&T that its product was configured to
6 perform the '089 functionality. They field-tested the
7 minimization of drive test functionality for AT&T.

8 You will see Ericsson repeatedly advertises MDT as a
9 reason to buy Ericsson's products. You will hear that while
10 MDT was an optional feature in Ericsson's 4G LTE software,
11 each of its major big three U.S. customers bought the option.
12 None opted out.

13 You're also going to see that Ericsson didn't take out
14 this supposedly worthless MDT technology in its 5G products
15 which were released after this lawsuit over MDT was filed.
16 Instead, they doubled down on it. They included MDT in the
17 base software package that Ericsson includes with all of its
18 5G radio software. And this is the evidence that we found in
19 Ericsson's internal documents.

20 Now, in the face of this evidence, you will hear while
21 this lawsuit was pending, Ericsson commissioned what it calls
22 an audit and produced it to us to support this notion that no
23 one is using MDT, none of its customers want or use it. It
24 doesn't. It shows the opposite. Customers are clearly
25 turning it on, activating and enabling it in the base stations

1 they are using. And that is just looking at two snapshots in
2 time that Ericsson selected using a database that Ericsson
3 controls. Ericsson did not look at any other days or points
4 in time. It has that data available and chose not to.

5 The evidence will also show that Ericsson knows MDT is
6 not designed to be left on all the time. You heard the
7 suggestion in voir dire that your battery would be drained by
8 this technology. That's -- it's not designed to be left on
9 all the time or even used in every base station. It's
10 supposed to be done in short periodic intervals to check where
11 you might have a problem, to check where your customers might
12 not be receiving service, and then turn it off quickly.

13 And you may be presented with a lot of evidence on this
14 point whether and how customers use the products that Ericsson
15 sells. But at the end of the day, the evidence will show it's
16 all a sideshow. AT&T or T-Mobile are not on trial here.
17 Ericsson is, because Ericsson is using KPN's patented
18 technology in the products that Ericsson is selling.

19 So first Ericsson will tell you they don't infringe. But
20 they do have a fallback argument, and that is, well, even if
21 we do infringe, the '089 Patent is invalid. However, that is
22 Ericsson's burden to prove invalidity. I'm not going to say
23 anything about this fall-back defense right now, but we will
24 respond to it when it's our turn to do so. I will say this:
25 We think the Patent Office got it right when it issued the

1 '089.

2 Doctor Mangione-Smith will do the same analysis for each
3 of these other two patents. I'll touch on them just briefly
4 now. But the '637 Patent helps to keep the network from
5 overloading when it's congested. If you need to make a 911
6 phone call, you cannot have that call fail because the network
7 is down, which is a big problem now that the internet of
8 things has all of our parking meters and 18-wheeler fleet
9 management systems and gas meters pinging the network. The
10 patent teaches how to send away the robots so that your call
11 can go through.

12 The '235 Patent relates to something that's really very
13 brand new--authenticating a mobile device to a network. That
14 is a security feature to make sure that someone who's trying
15 to access the network is who they say they are. And it's
16 specific to Ericsson's 5G products.

17 Now, most of the network equipment out there now is 4G.
18 You might even see some 3G. Ericsson has only just started
19 rolling out its 5G products. We gave Ericsson notice of this
20 patent so that they could stop using it or take a license
21 before there are a lot of damages owed. And that's a good
22 segue to the last issue, which is, what is KPN owed for the
23 use of its property by Ericsson.

24 Here, you will hear from Mr. Wagner. He's an expert in
25 financial forensics. He was required to use two assumptions

1 that you're going to hear a lot about. The first is actually
2 written into the Patent Act. It says if you find Ericsson is
3 infringing, then "the damages can't be less than what's
4 written there, a reasonable royalty for the use made of the
5 invention by the infringer." Ericsson is the infringer here
6 and owes for each product sold. Each sale is a use or act of
7 infringement.

8 Mr. Wagner had to follow another rule. He had to assume,
9 when he's calculating damages in this case, that the patent is
10 both valid and infringed. That's what we have to do to
11 calculate damages in a lawsuit. But as you can imagine,
12 that's not quite how KPN and Ericsson negotiated before this
13 lawsuit.

14 When Ericsson took a license back in 2004 and 2010 and
15 2014 to KPN's patents, they didn't do what the experts are
16 required to do and look at here. It was a business deal.
17 They were business partners. KPN needed to be on friendly
18 terms with their major supplier. There are only two other
19 companies in the world that KPN can get this critical
20 equipment from that it needs to run its business besides
21 Ericsson, and their business deals reflected that reality.
22 KPN didn't get a royalty for every use. It got a cross
23 license to Ericsson's portfolio and 48 million in vouchers.

24 Now, those voucher agreements, by the way, in 2004, 2010,
25 and 2014, you will see they all contain this language that you

1 have on the screen. It says, "This voucher agreement shall
2 not be used as a reference as regards the value of patents or
3 of fair and reasonable compensation for the use of patents of
4 the parties." Ericsson promised never to argue that KPN's
5 patents are only worth the \$48 million in vouchers. The
6 evidence won't support that anyway.

7 But the evidence will also show you that Ericsson's
8 promise in writing in these three different agreements is
9 worthless. Ericsson and its expert relies almost exclusively
10 on what it agreed not to when calculating damages in this
11 case.

12 But in any event, when Ericsson decided to become an
13 unwilling licensee requiring us to file a lawsuit, well,
14 juries obviously can't award vouchers and cross licenses. Now
15 we have to follow the law, and so Mr. Wagner will show you the
16 evidence of the sales Ericsson has actually made using KPN's
17 patents, looking at each patent individually.

18 Now, for the '235 Patent, the 5G patent in the middle
19 there, that's not very much money. It actually results in a
20 royalty to us of less than a thousand dollars because Ericsson
21 is rolling out its 5G products literally as we speak. And we
22 hope, perhaps optimistically, that they will agree eventually
23 to license this patent before there are a lot of damages owed.
24 But we need your help even though those sales have only begun
25 now.

1 By contrast, for the '089 Patent, the one on the top,
2 Ericsson has sold many, many products incorporating KPN's
3 patented invention. You will hear that Mr. Wagner calculates
4 a reasonable royalty rate to KPN for that '089 Patent is what
5 you see there, 0.225 percent. That means for every dollar of
6 product that Ericsson sells, KPN would receive two-tenths of a
7 penny. Now, that adds up to a big number only because
8 Ericsson has sold many, many products incorporating the '089
9 Patent technology.

10 Now, Ericsson will try to exclude some of their sales by
11 arguing that they were for hardware unrelated to the patent.
12 The evidence will show that's wrong. The '089 talks in
13 several places about the hardware that's required to practice
14 the invention. Here's just one. It's a network node. You
15 will hear it referred to in this case as an eNodeB, which is
16 an industry term for a base station.

17 In fact, Ericsson's documents talk about MDT being
18 performed in the nodes, or eNBs. You will also hear what went
19 in -- you will hear about all of the prior license agreements
20 between KPN and Ericsson's competitors. Each of Ericsson's
21 competitors has licensed KPN's patents. None of them required
22 us to chase them down in a lawsuit. They wanted a business
23 deal. They didn't want a jury to calculate how much they had
24 used KPN's invention. You will hear that Ericsson's two
25 biggest competitors, Nokia and Huawei, have each taken a

1 license to KPN's patents and didn't require us to chase them
2 down.

3 Now, there is one last defense that I haven't even
4 mentioned because it confuses me. It stands for fair,
5 reasonable, and non-discriminatory. That's a mouthful, but it
6 basically means if a patent is essential, then you have to
7 license it on what are called FRAND rates.

8 So another fall-back for Ericsson is, well, if we do
9 infringe, then the patent is essential and we want a discount.
10 That really is what we expect them to say. We don't infringe,
11 but if we do, we want a discount. I'm going to let them
12 explain that one to you.

13 And you're going to hear a lot of defenses. Ericsson
14 will say, we don't infringe any of KPN's patents, but if we
15 do, then those patents are invalid, never should have been
16 issued in the first place. But if that's wrong, no one is
17 using them, they're not important, we shouldn't pay much
18 money. But if that's wrong, they are so important, that they
19 are essential and we want a discount.

20 THE COURT: You have five minutes remaining.

21 MS. WHITE: It's called covering all the bases, but
22 it's not credible and it won't be supported by the evidence.

23 I won't get to talk to you like this again until the
24 closing argument, and I am certain that my opposing counsel
25 who's very good will say things in his opening statement that

1 make me want to jump back up here and respond. That's not how
2 this works. I don't get to do that.

3 So please keep an open mind like the Judge instructed you
4 as the testimony and evidence unfolds, because at the end of
5 this, you-all will have some decisions to make. And most of
6 all, thank you. I know it's costing you time away from your
7 jobs and your families to be here, and on behalf of my team
8 and my client, we're very grateful to you for listening to
9 this evidence.

10 Thank you.

11 THE COURT: Defendants may now present their opening
12 statement to the jury.

13 Would you like a warning on your time, Mr. Stevenson?

14 MR. STEVENSON: No, thank you, Your Honor. I have a
15 stopwatch.

16 THE COURT: All right. You may proceed.

17 MR. STEVENSON: May it please the Court.

18 Good afternoon, ladies and gentlemen. Ericsson's defense
19 in this case is very straightforward. Neither Ericsson nor
20 its customers use the technology that's claimed in KPN's
21 patents. Ericsson's equipment works differently than the
22 claims in the three patents in this case, and the features
23 just aren't being used. And Ericsson should not have to pay
24 KPN for technology that it's not using.

25 The reason KPN's technology isn't being used is because

1 while KPN's patents have interesting ideas, you'll see that
2 they're not commercially practical. And later in my opening,
3 I'll go into those details.

4 Now, you heard a little bit about KPN and Ericsson's long
5 business history, and before filing this suit, KPN approached
6 Ericsson and accused it of infringement of about 15 patents,
7 families of patents, including the three that are asserted in
8 this lawsuit. And this lawsuit is just about three patents.

9 Ericsson respectfully listened to KPN's position,
10 Ericsson engineers spent a lot of time analyzing the patents,
11 reviewing them, and we shared our analysis and review with KPN
12 in writing, and concluded that Ericsson wasn't using these
13 inventions and shouldn't have to pay royalties for them.

14 Now, in patent licensing, just as well as in patent
15 litigation, the rule is simple--you pay a reasonable royalty
16 for what you use, but you don't have to pay for what you're
17 not using. And that's been Ericsson's position throughout the
18 years in its business relationship with KPN. If we're using a
19 patent, we're actually using a patent, we'll pay fair
20 royalties. But if we're not using it, we just shouldn't have
21 to pay. And in a nutshell, that's what our case is about.

22 Now, before we get into some more details, let me
23 introduce you first to Ericsson, who we're proud to represent
24 in this case. So Ericsson is one of the leading cellular
25 equipment providers in the world. Its U.S. headquarters are

1 here in Texas. It's up in Plano on Legacy Road, which is part
2 of the Eastern District of Texas. In addition to the Plano
3 facility, Ericsson was very proud to announce recently that
4 its going to build its new 5G factory of the future in
5 Lewisville, Texas.

6 Ericsson's worldwide headquarters is in Sweden, and
7 that's where we got our start. It was back in 1876. The
8 company was started by Lars Magnus Ericsson. That's why it's
9 called LM Ericsson now. And he was a one-man telegraph shop
10 in Sweden. Then shortly after that, the land line phone got
11 invented, and he began repairing land line phones. Then he
12 started making phones, making telephone switchboards. And for
13 decades, that was Ericsson's business was making telephones,
14 making central office switches.

15 And then in the 1980s, Ericsson got into cell phones, the
16 cellular business. They started making phones and also
17 network equipment. And Ericsson sold phones for about 25
18 years. You may have heard of them from the phones. You may
19 have owned an Ericsson phone in the past. But then they spun
20 that off, the phone part of their business, off to Sony, but
21 Ericsson does continue to make cellular network and that's the
22 base stations. That's Ericsson's main product, the cellular
23 base stations that you see along the side of the road.

24 Their customers, as you heard, are the network operators
25 the AT&Ts, the T-Mobiles, the Verizons. And there are also

1 companies all over the world, including KPN, who was a
2 customer for years of Ericsson.

3 This is KPN's corporate headquarters in Rotterdam, and
4 they're one of the major network operators, as you heard, in
5 the Netherlands.

6 Now, we're all familiar with second generation, 2G; third
7 generation, 3G; fourth generation, 4G; 5G networks. We've
8 heard of all that before, and Ericsson's been selling base
9 stations throughout all the generations. On average, an
10 operator like a U.S. operator for each one of the generations
11 will buy about 70,000 base stations to populate its network.
12 And that's per generation.

13 And if you ever want to know what generation you're on,
14 what network you're on, you can just look in the upper
15 right-hand corner of your phone and it will usually say 4G, or
16 LTE. That means the same thing. It may say 5G. And 2G and
17 3G today are really basically obsolete now. We are on to 4G
18 and 5G networks.

19 And you've noticed that each generation of the network
20 seems to get better, faster. You've got better battery life,
21 faster downloads. And that's in large part due to Ericsson's
22 R&D and their contributions to the technology. And I'm not
23 going to suggest for a minute that that's all Ericsson -- that
24 Ericsson's the sole inventor of all this. It's an
25 industry-wide effort. It's very collaborative. But Ericsson

1 does do its share, and it spends 3 to 5 billion a year on
2 research and development. And that's Ericsson.

3 But now let me introduce you to our corporate
4 representative from Ericsson, Mr. Patricio Delgado. You met
5 him this morning in voir dire. He's a vice president, and he
6 works in the patent licensing group of Ericsson. He's worked
7 there about 12 years. And his job is to value Ericsson's
8 patent portfolio as well as other companies' patent
9 portfolios.

10 You're going to hear the word 'portfolio' in the case.
11 That's basically a group of patents. And as companies get
12 patents, they group them into what are called portfolios.

13 Now, what you'll hear is that Ericsson has thousands of
14 patents, and so do many other companies Ericsson deals with.
15 So the companies in the industry license each other so they
16 can make interoperable products.

17 Now, the interesting thing about all of these thousands
18 of patents is only a very small subset are actually
19 commercially used. And that's not just true for Ericsson.
20 That's true across the industry. And so Mr. Delgado's job at
21 Ericsson, when he's working on these licensing deals with
22 other companies, is to look at the Ericsson portfolio and look
23 at the other company's portfolio and figure out which of the
24 patents in there actually are being commercially used, what
25 are the portion of commercial use patents.

1 And you will hear from Mr. Delgado in this case as a
2 witness.

3 You're also going to hear from some other vice presidents
4 of Ericsson--Mr. Jacob du Plooy, who is in the back of the
5 courtroom, and Jeff Diamond. Now, they're vice presidents who
6 work with customers on technical matters. They work for
7 Ericsson, but they -- they face the customers, a lot of like
8 the technical support for the big network customers. They
9 help them figure out what equipment they need, to architect
10 their system, set it up, test it, troubleshoot products, do
11 upgrades.

12 And this isn't a seldom forget business by any means.
13 After Ericsson sells equipment to customers, they stay
14 involved. They collaborate after the sales. And you'll hear
15 from those witnesses who are going to explain to you how the
16 Ericsson equipment is actually set up and used in the field.

17 Now let's talk about the patents. There are three of
18 them. And because the numbers can get a little confusing,
19 we've also given them nicknames. Let's start with the '089
20 Patent. We call that the drive testing patent. That's the
21 one for which KPN seeks \$31 million. The second patent, the
22 '637, we'll refer to as the deny access patent for which they
23 seek \$370,000. And the '235 Patent is the channel
24 authentication patent for which they seek a little over \$500.
25 And for obvious reasons, I think all the parties will end up

1 spending almost all their time talking about the drive
2 testing, the '089.

3 You're going to hear from two experts in the field,
4 Dr. Stephen Wicker, who is sitting in the back, and Doctor
5 Kevin Jeffay, who is also in the back. Doctor Wicker teaches
6 electrical engineering at Cornell University, and Doctor
7 Jeffay teaches computer science at the University of North
8 Carolina. They split up the patents, and both have analyzed
9 KPN's infringement assertion. They have looked at the
10 workings of the Ericsson equipment and provided very lengthy
11 written reports and have concluded that KPN's patents are not
12 used and not infringed.

13 And let me preview for you what the witnesses are going
14 to tell you about these patents and their lack of use in
15 infringement. So let's start with the '089.

16 The problem the '089 addresses is dead spots or coverage
17 holes in the cellular network. And we've all experienced
18 that. Right? We've hit a dead spot. I usually hit one on
19 I-20 somewhere between Longview and Tyler, and I'm sure you
20 got your few favorites as well. And the network providers are
21 obviously always looking for the dead spots. And when they
22 find one, they can put up another base station and try to
23 patch the hole.

24 Coincidentally, Ms. White and I did not share slides in
25 advance of preparing them, and we both found the Sprint

1 can-you-hear-me-now guy. And that was our example that we
2 were both going to give you. She may have stolen my thunder
3 in that, but this is basically what drive testing is.

4 Now, it's more sophisticated than walking around, saying,
5 can you hear me now. It's backpacks with logging information,
6 you know, arrays of phones put on cars as they drive around.
7 But what they're doing, historically, the operators, and still
8 to today you will hear, they're still doing it today, because
9 this does things that the MDT feature can't do, is the drive
10 tests.

11 Now, the theory of KPN's patent is the following: Can we
12 replace the drive testing and look for coverage issues in the
13 network just by using all the phones that are out there in the
14 population, you know, in people's pockets, walking around. In
15 other words, we all turn into the drive testers, quote,
16 unquote, automatically take the signal measurements and send
17 them back to the network. And that's what the patent
18 proposes.

19 And let me show you a figure. It's got a little bit of a
20 depiction from figure 3 of the patent, which we'll talk about,
21 but the idea that's disclosed in the patent and described is
22 the following: If you have a known network, like a 3G
23 network, that network would connect to and instruct your phone
24 to go measure, for instance, an unknown network like the 4G,
25 they may be building out the 4G network or they may just be

1 interested in finding coverage holes there, your phone would
2 then measure the 4G network and send the readings back over to
3 the 3G network, which is obvious because if you find the
4 coverage hole in the 4G network and you don't have service,
5 you can't send the reading back. So that's a little bit of
6 the idea of the patent.

7 Now, while this sounds interesting in theory, like many
8 patents it's not commercially practical in the real world.
9 Why? It drains your battery badly. The reason it's a battery
10 drainer is the phone is constantly pinging the network to
11 measure and transmit data, and it cuts battery life in half or
12 worse. The evidence will show that no network operators in
13 the United States use this feature or have ever used it
14 commercially. One briefly tested it, but isn't using it.

15 Now, you heard KPN's attorney argue in the opening
16 statement, or at least predict in the opening statement that
17 you'll hear, that operators bought this feature as part of a
18 package so they must be using it, they must value it. But
19 that isn't the case. And what you're going to hear is this
20 feature, MDT, is one of hundreds of features that come along
21 with a software package when customers buy an Ericsson base
22 station.

23 You know, it's a lot like all the pages of pre-installed,
24 preloaded apps you get on your phone when you get a new phone,
25 and many of them aren't used. Similarly, many of the hundreds

1 of features that are just defaulted into an Ericsson software
2 package are never used, and this is one of the features that
3 just isn't used.

4 Now, KPN's lawyer also told you in her opening statement
5 that the operators in the United States have activated this
6 feature, but that's not the whole story. And this is a very
7 important, very important, part of the case, because the
8 feature has never actually been configured by any carrier in
9 the United States commercially.

10 So activating a base station, right, is really nothing
11 more than setting a flag in software. It's in a setup screen,
12 and it's one of literally thousands of settings.

13 AT&T and Verizon -- so you saw a slide that was placed up
14 with a list of base stations. AT&T and Verizon have set the
15 flag to disabled across their whole network with the exception
16 of 1 or 200 base stations. T-Mobile has set the flag to
17 enabled for its network. But setting the flag to enable does
18 not configure or activate the MDT feature because something
19 else is absolutely necessary to happen, and that is the second
20 part of it, which is, you have to get consent from the user.
21 To be configured and activated, the network operators must get
22 customer consent to log their phones.

23 Now, the base station actually does a mandatory database
24 check for customer consent before the MDT feature can be
25 activated or used. And if a customer consent is not in that

1 database, if it's not logged into the database, the phone will
2 not be configured to use MDT, and this requirement is actually
3 coded into the programming of the base station.

4 And so that's why in this drawing here or the slide we
5 have this power circuit breaker switch light analogy. And the
6 reason we put it there is, you know, activating in the base
7 station is sort of like flipping the circuit breaker in your
8 house. You know, that doesn't turn the light on. If you want
9 the light to come on, you have to do more, which is flip the
10 light switch in the room and screw a lightbulb into the
11 socket.

12 And what you're not going to see is the lightbulb or
13 switch ever coming into play. You won't see any evidence in
14 this case that a single operator in the United States has
15 obtained or even asked for customer consent. No lightbulbs,
16 no flipped switches. And, remember, KPN has the burden of
17 proof here.

18 Now, I'm going to ask you to do something. I'm going to
19 ask you to keep a running tally in your heads as you listen to
20 the evidence of how many actual customer consents KPN will put
21 into evidence. I mean, there are 300 million-plus cellular
22 subscribers, customers, in the United States. So if I were
23 consenting, you would think KPN would have no problem bringing
24 that evidence forward.

25 Now, what has been argued is, well, the Ericsson software

1 may be capable of doing this, and there was a discussion about
2 capable versus configured and you saw the PC analogy. And I
3 think the takeaway from that was, well, this might get done in
4 the future, but it's not being done today.

5 And I think that argument or that line of analysis you'll
6 see is wrong for two reasons. The first is, the evidence is
7 going to show that this feature has been part of the Ericsson
8 software bundle since 2016 and nobody's used it for six years.

9 Secondly, we're going to look in this case with the
10 witnesses very carefully at the claims of KPN's patents. And
11 Judge Gilstrap instructed you about the importance of the
12 claims. That really is what defines whether there's
13 infringement or not. The language that's used in the claims
14 is that the base station, or the network, must instruct the
15 phone to take measurements, and it has to be configured to
16 take measurements and to report the measurements back to the
17 base station.

18 And you'll see, if we can go to the next slide, please,
19 Mr. Moreno, that configured means not merely capable of. And
20 this is the claim construction that Judge Gilstrap told you
21 about. It's in the tab in your juror notebooks called
22 Construed Terms. We don't have to turn to that now, but these
23 are rulings from the Court that are binding. They are the
24 instructions of the Court for what you have to find. And KPN
25 has the burden to show infringement by showing that the

1 feature is actually configured today, not merely being capable
2 of being used in the future.

3 And here's the evidence you're going to see. If a
4 carrier wants to put a phone in its network into this MDT
5 mode, it has to send it a configuration message. You're going
6 to hear about that message in the case. It's called the RRC,
7 connected reconfiguration, message. And I know some of you
8 are trying to write it down. I will say it again because it
9 will be important in the evidence--RRC, connected
10 reconfiguration.

11 The reason it's called a reconfiguration message is this
12 message sends the configuration to the phone if it's ever
13 used, if the message is ever sent, it would send the
14 configuration to the phone to begin doing the measurements.
15 It has some parameters about what to measure, how often to
16 measure, that sort of thing. That's the configuration
17 message.

18 What you will hear is the RRC reconfiguration message
19 cannot and will not be sent unless there is a customer consent
20 in the database of the network reflected in there and the base
21 station checks and finds that customer consent. Without it,
22 the configuration message is never sent to the phone, and
23 without the configuration message ever being sent to the
24 phone, the phone will not do MDT and won't be configured. And
25 that's the evidence you're going to hear. And that's why this

1 isn't used.

2 But even if we were to posit a hypothetical world where
3 all the base stations were actually configured, right, all the
4 flags were set to enabled and every customer had consented and
5 they were starting to use this, KPN's patents still wouldn't
6 be infringed. And that's because Ericsson's equipment works
7 differently than KPN's patent.

8 Now, KPN's patent claims, and this is claim 13 that we'll
9 show in the evidence, one of the ones they are asserting, it
10 requires a first and second wireless access network. Two
11 networks, first and second wireless access network. And the
12 phone is instructed over the first network to take
13 measurements of the second network. But that's not how
14 Ericsson equipment works.

15 KPN's technical expert, I believe, is going to tell you
16 that in Ericsson's MDT feature, if it were to be used, a phone
17 connects to a single base station, a single cell, and measures
18 a single neighboring base station or a single neighboring
19 cell, but the claim isn't infringed by a system that compares
20 one cell to another or uses one cell to measure another. That
21 isn't two separate networks.

22 Now, on top of that, you'll hear from us that KPN didn't
23 actually invent what they're accusing of infringement. So
24 this individual cell approach that I just described to you
25 that you're going to hear from KPN's expert was actually

1 invented originally by Motorola back in the 1990s, back in the
2 2G days. They actually got a patent on it, and you'll see
3 that patent. It's called the Tayloe patent. It's owned by
4 Motorola. And that patent is prior art to this patent.

5 The patent is now expired to Motorola so the technology,
6 because the patent has expired, is freely publicly available.
7 But that's the approach Ericsson is using, the approach in the
8 Motorola patent. And KPN cannot validly claim that their
9 patent covers the Motorola approach that was not invented by
10 them and was actually invented by Motorola decades earlier.

11 Let's turn now to the second patent, the '637 deny access
12 patent.

13 This addresses a completely different problem than the
14 drive testing patent we just looked at. The problem being
15 addressed by this patent is, during the time of day when
16 there's network congestion like drive time when a lot of
17 people are on their phones, the network needs to limit the
18 number of phones and other devices that will connect to it
19 just to keep it from going over capacity.

20 And the theory behind this patent is, to reduce
21 congestion, the network would set a time interval and during
22 this time interval it's going to tell a group of devices,
23 don't try to connect to the network. So think of it as
24 putting your phones in time-out or a group of phones in
25 time-out.

1 Now, the claim requires that the network keep a register
2 or like a list of the devices that are in time-out. And then
3 if a device in time-out actually tries to connect, they will
4 be denied access. Now again, while that's interesting in
5 theory, there's practical problems. Ericsson base stations
6 never deny access to phones. What if it's an emergency call?
7 Ericsson deals with high traffic times differently, not by
8 denying access. What it does is it gives voice calls
9 priority, and it works -- the Ericsson equipment works in data
10 around the voice calls. So access is never denied.

11 And you'll hear that if traffic in the network gets very
12 high, Ericsson base stations can ask a phone to back off for a
13 short period of time. But if the phone tries to connect
14 anyway, perhaps because it's an emergency, the Ericsson base
15 station will never deny that request. And that's why this
16 patent isn't infringed, either.

17 Third, let's talk about the '235 authentication patent.
18 This is the patent KPN is asking for \$512 on. When a phone
19 connects to the network, obviously there is authentication.
20 Your phone and the base station authenticate each other by
21 exchanging a sequence of very complicated codes using shared
22 secret keys.

23 Now, this has been the case for decades. KPN did not
24 invent this. KPN's patent proposes adding additional levels
25 of authentication on top of what's already been done where the

1 channel number that the phone is -- is coming in on is
2 also authenticated as well. But in -- this idea, again, isn't
3 used in practice in today's cellular networks. There isn't a
4 need for this additional authentication. Ericsson base
5 stations do not send channel information as part of
6 authentication.

7 Now, I'd like to talk about the business history between
8 the parties, and it has been a long business history. But the
9 business relationship between Ericsson and KPN with regard to
10 patents was a bit different than Ericsson had with its other
11 network customers. You know, even though Ericsson and KPN
12 were business partners, KPN insisted it had patents that
13 Ericsson infringed and needed to license.

14 Now, Ericsson doesn't have these type of arrangements
15 with its other network customers who also own their own
16 patents. But KPN owns patents, they have every right to
17 assert patents, and we 100 percent respect their right. So
18 when KPN brought the patents to us and said, you may infringe
19 these, Ericsson carefully analyzed the patents that KPN was
20 asserting.

21 Now, the two companies disagreed over the technical
22 merits for years of what Ericsson was and wasn't using. And
23 Ericsson didn't believe it was using KPN's technology and
24 didn't believe it needed to pay for a license, but KPN was
25 insistent. And that put us in an awkward position, to be

1 candid, because you can't win an argument with a customer.

2 So the way this issue historically resolved itself was
3 KPN and Ericsson basically agreed to disagree. Ericsson
4 didn't -- Ericsson provided KPN with a discount by a voucher
5 program on the equipment it was buying, and it didn't ask for
6 a license in return. Instead, we agreed KPN would just
7 provide a non-assert. And this is basically saying, a
8 non-assert, that the two sides agree to disagree, but let's do
9 business together and let's just not go to court.

10 But things changed in 2020 when KPN told Ericsson it
11 wasn't going to buy any more equipment from them. They were
12 going to ship their business from Ericsson to Huawei, a
13 competitor of Ericsson in base stations, and Ericsson was
14 certainly disappointed to lose KPN as a customer and we
15 certainly hoped to win their business back, but until then we
16 respect KPN's right to do business with whom they choose to do
17 be with.

18 But that meant, with KPN not doing business with Ericsson
19 anymore, the voucher discount program and agreeing to disagree
20 just wasn't feasible anymore. And so before filing this suit,
21 KPN asked Ericsson to pay it, to continue the voucher program
22 and pay \$2.8 million Euros per year for a license. That's
23 about a little more than \$3 million a year. And that's not
24 just for the three patents-in-suit; that's for all of KPN's
25 patents that they own worldwide.

1 But Ericsson had looked at the patents and was still of
2 the opinion we aren't using them, and we gave them a detailed
3 written description -- analysis of why, but they just weren't
4 satisfied. So KPN brought this dispute to court, and Ericsson
5 is here in court to defend itself and show you why we don't
6 use the patents. And it will be up to you, ladies and
7 gentlemen, to decide.

8 Now, KPN suggested in her opening that Ericsson took too
9 long to -- to license KPN's portfolio, we should have taken
10 the deal. But I want you to consider the objective facts when
11 you look at this. KPN has hundreds or thousands of patents.
12 They asserted 15 families against us in negotiations, and they
13 brought a case on three patents, these three. One they admit
14 is worth \$500, another is worth a few hundred thousand
15 dollars, and none of the three are being used. And we've got
16 to assume that they brought their best foot forward in this
17 litigation.

18 Really quickly on damages, that can be quickly addressed.
19 If the patents aren't used or aren't infringed, nothing is
20 owed. And you'll see in this case that KPN is asking far more
21 than the market says their patents are worth. Damages are
22 driven 99 percent in this case by a single patent. And KPN is
23 asking you to award an amount many times what others in the
24 industry have licensed KPN's patents for and also many times
25 more than its own license offer to Ericsson.

1 Finally, ladies and gentlemen, that concludes my remarks.
2 But before sitting down, I'd like to thank you in advance for
3 your service in this case. I think all the parties agree jury
4 service is a major commitment, and we greatly appreciate you
5 taking the time to help us resolve this dispute.

6 We're on a time budget in this case. We promise to do
7 our best to respect your time and attention and to make the
8 evidence presentation as straightforward and as simple as
9 possible. And I'd just ask you one thing: Please keep an
10 open mind during the case. I know you will. We speak second,
11 and we put on our evidence second.

12 THE COURT: Time's expired, Mr. Stevenson.

13 MR. STEVENSON: Thank you, Your Honor.

14 And we look forward to presenting our case to you.

15 THE COURT: All right, ladies and gentlemen. You've
16 now heard opening statements from both of the competing
17 parties.

18 Let me ask you this, counsel does either party wish to
19 invoke the Rule?

20 MS. WHITE: Yes, Your Honor, for the Plaintiff,
21 please.

22 THE COURT: All right. Am I correct that you wish
23 to invoke the Rule such that fact witnesses are covered but
24 expert witnesses and corporate representatives are not?

25 MS. WHITE: That's right, Your Honor.

1 THE COURT: All right. That means, the Rule having
2 been invoked in that fashion, that if you are a fact witness
3 in this case, you are required to wait outside the courtroom
4 until you're called to testify. If you are a designated
5 expert or if you're a corporate representative, you may remain
6 in the courtroom through the testimony of other witnesses.

7 Now, before I ask Plaintiff to call their first witness,
8 we're going to take a short recess, ladies and gentlemen, and
9 this is one where you can simply close your notebooks and
10 leave them in your chairs. I'm going to try to keep this
11 short so we can get the first witness on the witness stand
12 promptly.

13 Please follow all my instructions, including not to
14 discuss the case with each other. And, again, at this point
15 you still haven't heard any evidence.

16 With that, the jury is excused for a short recess.

17 (Whereupon, the jury left the courtroom.)

18 THE COURT: The Court stands in recess.

19 (Brief recess.)

20 THE COURT: Be seated, please.

21 Let's bring the jury in, please, Mr. Latham.

22 (Whereupon, the jury entered the courtroom.)

23 THE COURT: Please be seated, ladies and gentlemen.

24 I see a couple of jackets and sweaters that have been put
25 on in the jury box. I want you to know I have absolutely zero

1 control over the temperature in this room. It's all
2 controlled from the headquarters of the district in Tyler. So
3 don't blame me if you're cold.

4 All right. Plaintiff, call your first witness.

5 MR. HEALY: Your Honor, KPN calls Ms. Cornelia
6 Gerritse, also KPN's corporate representative.

7 THE COURT: All right. If the witness will come
8 forward and be sworn, please.

9 (Whereupon, the oath was administered by the Clerk.)

10 THE COURT: Please come around, have a seat on the
11 witness stand.

12 You may distribute binders, counsel.

13 All right. Mr. Healy, you may proceed with direct
14 examination when you're ready.

15 MR. HEALY: Thank you, Your Honor.

16 CORNELIA GERRITSE, SWORN,

17 Testified on direct examination by Mr. Healy as follows:

18 Q. Ms. Gerritse, good afternoon. As you know, my name is
19 Andres Healy, and I'm one of the attorneys representing KPN in
20 this matter.

21 Would you please introduce yourself to the jury, Ms.
22 Gerritse.

23 A. Yes. I'm Lia Gerritse from the Netherlands. I am
24 married for over 30 years. I have four grown-up kids, and I
25 work at KPN.

1 Q. And, Ms. Gerritse, are you an expert witness?

2 A. No.

3 Q. Have you ever testified in a trial before?

4 A. No.

5 Q. Have you ever been to a U.S. trial before?

6 A. No.

7 Q. Are you nervous today, Ms. Gerritse?

8 A. Yes.

9 Q. And is English your native language?

10 A. No.

11 Q. What is your native language?

12 A. Dutch.

13 Q. And we certainly appreciate that, and I know that we've
14 been practicing quite a bit for today. But if you do have any
15 trouble understanding myself or anyone, will you please let us
16 know?

17 A. Yes.

18 Q. And if people start talking a little too fast, will you
19 please let us know?

20 A. Yes.

21 Q. And I hope you understand, but if we do ask you to repeat
22 yourself today, would you mind doing that?

23 A. That's okay.

24 Q. Ms. Gerritse, could you please explain to the jury who
25 you work for?

1 A. I work for KPN BV.

2 Q. And is KPN BV the same company that is the Plaintiff in
3 this case?

4 A. No. It's the wholly-owned company from KPN NV, and KPN
5 BV is responsible for the day-to-day operations in the
6 Netherlands.

7 Q. And so of those two companies, which do you work for?

8 A. The BV.

9 Q. Okay. And when was KPN founded?

10 A. It was around 1880. Also used to be in charge of the
11 Postal Services.

12 Q. We heard a little bit earlier about Ericsson being in
13 charge of the telegraph. KPN do that as well?

14 A. Yes, KPN as well, yes.

15 Q. But what does KPN do today, Ms. Gerritse?

16 A. Today we are a technology company. We provide
17 telecommunication service in the Netherlands, so for instance
18 cellular service but also more traditional telephone. We are
19 like the AT&T or Verizon of the Netherlands.

20 Q. Sizewise, how does KPN compare to AT&T or Verizon?

21 A. We are tiny, very small.

22 Q. Roughly speaking, how many subscribers does KPN have?

23 A. Around 4 million.

24 Q. Do you have any idea as to how many customers AT&T has?

25 A. I understand around 200 million.

1 Q. Now, does KPN have any operations in the United States?

2 A. No, we don't.

3 Q. Does KPN sell any products in the United States?

4 A. No, we don't.

5 Q. So can you explain to the jury why KPN is here in this
6 case today?

7 A. Yes, we have patents in the USA, and USA courts is the
8 only place they're important.

9 Q. Now I want to take a step back. When did you first start
10 working at KPN?

11 A. That was in 1987.

12 Q. And what position do you currently hold at KPN?

13 A. At the moment I work for the Intellectual Property
14 Department.

15 Q. And can you explain to us what the Intellectual Property
16 Department does at KPN?

17 A. Yes. We advise KPN on all kinds of intellectual property
18 and then you have to think about patents but also trademarks
19 and copyrights.

20 Q. And with respect to patents, which is why we're here
21 today, what does the Intellectual Property Department
22 typically do?

23 A. Well, most of our time is based -- spent on prosecuting
24 patents like we are here to explain and also in licensing.

25 Q. And do you have any special qualifications to hold the

1 position that you do?

2 A. I'm a European patent attorney.

3 Q. And what does it take to become a European patent
4 attorney?

5 A. After university in the Netherlands, then you spend about
6 three years working as an apprentice for a qualified European
7 patent attorney. Then you have to pass an exam, and then you
8 are a European patent attorney yourself.

9 Q. Do you have an engineering background at all?

10 A. No.

11 Q. Do you have any technical background?

12 A. No.

13 Q. And can you explain to the jury, why does KPN invest in
14 new technology and patents?

15 A. Yes. Like we said, we are a telecommunications company.
16 There's a lot of developments there. We constantly have to
17 improve our network, make it more efficient, make it cheaper,
18 make it better. So our engineers are constantly working on
19 improving our technology, and we file patents to protect our
20 inventions and to make sure that we get a good compensation
21 for our investments in money and resources.

22 THE COURT: Let me ask the witness, could you pull
23 the microphone just a little bit closer? That's fine. Thank
24 you.

25 THE WITNESS: Okay.

1 THE COURT: Go ahead, counsel.

2 MR. HEALY: Thank you, Your Honor.

3 Q. (BY MR. HEALY) We heard a little bit about what Ericsson
4 spends in research and development. What does KPN, generally
5 speaking, spend each year on researching and developing new
6 telecommunications products?

7 A. Well, hundreds of millions. For instance, in 2020 we
8 spent around 300 million, and the year before was 450 million.

9 MR. HEALY: Mr. Boles, if we could bring up the
10 first slide, which I believe has PX 1, PX 3, and PX 5 on it?

11 Q. (BY MR. HEALY) Ms. Gerritse, do you understand that
12 these are the three asserted patents in this case?

13 A. Yes.

14 Q. And did any of these three patents result from KPN's
15 research and development activities?

16 A. Yes, all three of them.

17 Q. Now, did you personally do any work on the prosecution of
18 any of these three patents?

19 A. Yes, on the '089.

20 Q. And does KPN have any sort of standard procedures that it
21 goes through when it's prosecuting the patent?

22 A. Yes.

23 Q. For the benefit of the court reporter, if you would let
24 me finish my question?

25 A. Certainly.

1 Q. No problem. Can you explain to the jury what those
2 standard procedures are?

3 A. Yes. When an engineer within KPN has an invention, he
4 usually he has to come to our department and then would --
5 what we call a disclosure. And then we take a look at the
6 disclosure and discuss with the inventor. Usually there are
7 more inventors. So really understands what's the invention,
8 how it works, which problem it solves.

9 And then if it is -- if we judge it important enough,
10 then we coordinate between the inventor and an outside
11 counsel, and that outside counsel then actually writes the
12 patent. And we are organizing all this work.

13 Q. Is it fair to say that your role is largely coordinating
14 between the inventors and the outside counsel?

15 A. Yes.

16 Q. And did you employ this process for the '089 Patent?

17 A. Yes, I did.

18 Q. And, roughly speaking, how long did this process take?

19 A. It was about nine months.

20 Q. Now, when each of these three patents issued, was it
21 originally owned by KPN alone?

22 A. No.

23 Q. Who else owned an interest in these patents when they
24 issued?

25 A. It was co-owned with the Nederlandse Organisatie voor

1 Toegepast-Natuurwetenschappelijk Onderzoek, or shortly TNO.

2 Q. And is it okay if the rest of us just refer to that
3 entity as TNO?

4 A. Yes.

5 Q. I certainly appreciate that. What is TNO?

6 A. TNO is an independent research organization in the
7 Netherlands. They perform research in all different areas and
8 amongst others in wireless telecommunication technologies.

9 Q. And does KPN have any sort of -- does KPN have any
10 special relationship with TNO?

11 A. Oh, we are independent companies. But in 2010, KPN
12 transferred its research department to TNO, and since that
13 time, we worked very closely with them on developing new
14 wireless technologies.

15 Q. Does KPN pay TNO for any of the services that TNO
16 provides?

17 A. Yes.

18 Q. And does TNO still own any portion of the three patents
19 at issue?

20 A. No, not in these three patents.

21 Q. What happened with respect to TNO's rights?

22 A. They assigned all the rights in these patents to KPN, and
23 in return they received a license to keep using the patents
24 for their research, and they will get 25 percent of all monies
25 KPN generates with the patents after deduction of certain

1 costs and expenses.

2 Q. So if KPN receives any monies in this case, will TNO
3 receive 25 percent of those monies?

4 A. After deduction of costs and expenses, yes.

5 MR. HEALY: And, Mr. Boles, if you can pull up PX
6 473, 474, and 476.

7 Q. (BY MR. HEALY) Ms. Gerritse, have you reviewed these
8 documents?

9 A. Yes.

10 Q. And what are these documents?

11 A. These are the actual assignments from TNO to KPN that we
12 filed with the U.S. Patent Office.

13 Q. Did you also say you do work related to licensing of
14 KPN's patents?

15 A. Yes, that is true.

16 Q. And can you explain to the jury what it means to license
17 a patent?

18 A. Well, patents give you basically the right to preclude
19 everyone else from practicing your patent, and by giving
20 someone a license to your patents, you allow them to practice
21 your patent as well. And that's, of course, valuable.

22 Q. Does KPN charge for licenses to its patents?

23 A. Yes, we do.

24 Q. Is KPN the only company in the world that licenses its
25 patents?

1 A. No.

2 Q. Is KPN the only company that charges to license its
3 patents?

4 A. No.

5 Q. What does KPN do with the money that it receives from
6 licensing its patents?

7 A. We use it to offset the costs of further research and
8 development in the improvement of our technologies.

9 MR. HEALY: And, Your Honor, at this point we're
10 going to move into confidential materials so I'd move to seal
11 the courtroom. And I'll note that at least the initial
12 portion, Ericsson individuals do not need to leave.

13 THE COURT: All right. Based on counsel's request,
14 I'll order the courtroom sealed to protect confidential or
15 proprietary information.

16 I'll direct that persons present who are not subject to
17 the protective order in this case should excuse themselves
18 from the courtroom until it's reopened and unsealed.

19 Mr. Healy, you indicated there's some portion of this
20 that the Ericsson personnel could remain for. I don't know
21 how to police that. I mean, if you want to stop when you want
22 me to ask the Ericsson people not subject to the protective
23 order to leave and let me know, that's fine. If you want them
24 to go ahead and leave now, that's fine. But I don't know when
25 you're going to reach that point. Only you do. So you're

1 going to have to let me know.

2 But if KPN has no problem with Ericsson personnel who are
3 not otherwise subject to the protective order remaining for a
4 portion of this, I'll permit it until you indicate otherwise.

5 MR. HEALY: That's perfectly fine, Your Honor.

6 THE COURT: All right. With that understanding,
7 we'll consider the courtroom and the record are sealed at this
8 time.

9 (Courtroom sealed.)

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(Courtroom unsealed.)

MR. STEVENSON: May we approach to pass out cross binders?

THE COURT: You may.

(Brief pause.)

THE COURT: All right, counsel. Proceed with cross-examination.

CROSS EXAMINATION

By Mr. Stevenson:

Q. Ms. Gerritse, you are a patent attorney in Europe. Correct?

A. Yes, that's correct.

Q. And your title within KPN is what?

A. European patent attorney.

Q. Okay. And how many people are there in your department involved in patent licensing?

A. Six.

Q. And the head of that department is Mr. Wuyts?

A. Wuyts, yes. That's right.

Q. But you've been selected to be the representative of KPN

1 for this trial, haven't you?

2 A. Yes, that's right.

3 Q. And that means you're testifying on behalf of the company
4 here in the trial. Correct?

5 A. That's how I understand it.

6 Q. Okay. And I'd like to ask you about some of the
7 statements and assertions your company has made in this case.

8 Do you recall --

9 MR. STEVENSON: May I have the elmo, please?

10 Q. (BY MR. STEVENSON) Do you recall seeing this slide in
11 the opening statement?

12 A. Yes.

13 Q. And this was argued about AT&T and its use of the
14 minimization of drive testing feature.

15 A. I do not really recall that. Maybe you can --

16 Q. Well, Do you remember seeing this slide in opening?

17 A. Yes.

18 Q. And it was a discussion of, on the slide, minimization of
19 drive testing. Right?

20 A. Yes.

21 Q. You understand that's the '089 Patent?

22 A. Yes.

23 Q. That's the patent that KPN is seeking \$31 million in
24 damages in this case for?

25 A. That's right.

1 Q. And that's the patent that Ericsson contends isn't being
2 used in the United States. Correct?

3 A. That's my understanding, yes.

4 Q. Now, this slide shows three columns, FAJ, feature name,
5 and NIRT priority, doesn't it?

6 A. I see that on the slide, yes.

7 Q. And you understand that's a -- that's a blow-out of
8 Plaintiff's Exhibit 71?

9 A. No, I don't see it. I do not have PX 71.

10 Q. Do you see in the upper right-hand corner or upper
11 left-hand corner?

12 A. Yes.

13 Q. Excuse me. It says PX 71. That's the source for this
14 slide, isn't it?

15 A. If you say so.

16 Q. I believe it's your company's slide, isn't it, ma'am?

17 A. I have not seen this slide.

18 Q. I would like to ask you about it because that's been
19 presented in this trial by your company, hasn't it?

20 A. I've seen it, yes.

21 Q. You saw it in the opening, didn't you?

22 A. I'm not sure.

23 Q. Let me ask you about it. I want to show you PX 71 on the
24 elmo. This is the source document it came from.

25 MR. HEALY: Objection, Your Honor. May I approach?

1 THE COURT: I'm sorry?

2 MR. HEALY: May I approach, Your Honor?

3 THE COURT: Approach the bench, counsel.

4 (The following was had outside the hearing of the
5 jury.)

6 MR. HEALY: Your Honor, this is a confidential
7 Ericsson document that the witness has never been entitled to
8 see. I don't know why we're asking her questions about it.

9 MR. STEVENSON: It was shown in open court by her
10 lawyer in opening, and I want to ask a question --

11 THE COURT: It's a pre-admitted exhibit in this
12 case, isn't it?

13 MR. HEALY: My point is it's a document marked as --
14 as confidential, the witness has never seen it. I see no
15 reason to ask her technical questions about the document. If
16 you want to ask questions, that's fine, but the witness --this
17 is what we got into earlier where they want to ask our witness
18 technical questions, she's not an expert, she has no
19 engineering background, she has no idea about the technical
20 background of Ericsson's own documents. And I don't
21 understand this line of questioning.

22 THE COURT: Well, she's not an expert witness and
23 she's not going to give opinions. But to the extent it's a
24 pre-admitted exhibit in this case, counsel for Ericsson's
25 entitled to ask her what she knows about it. It may be very

1 little, but he's entitled to inquire.

2 MR. HEALY: Okay. Understood.

3 THE COURT: Let's proceed.

4 MR. HEALY: Thank you.

5 (The following was had in the presence and hearing
6 of the jury.)

7 THE COURT: Objection's overruled. Let's proceed.

8 Q. (BY MR. STEVENSON) So I want to show you a page from
9 this document, and this says, AT&T, 21 quarter 2GAed features.
10 Do you see that?

11 A. Yes.

12 Q. And that is the same -- I'm going to put your slide from
13 opening back up. That's the same as the slide from opening,
14 the same title. Right?

15 A. I would like to see the document. I mean --

16 Q. Here's what I'd like to ask you --

17 A. -- you're switching slides.

18 Q. Yeah, I'm going to direct your attention to, because I
19 want to make the point and see if you agree with me, that I'm
20 showing you the source document that this slide was made from.

21 A. Okay.

22 Q. So you'll notice at the bottom, we have a control number
23 on the documents on this case.

24 A. Yes.

25 Q. You've heard of those before. Those are Bates numbers?

1 A. Bates numbers, yes.

2 Q. You've dealt with those before. Right?

3 A. Yes.

4 Q. And it ends in 84212, the slide?

5 A. Yes.

6 Q. Okay. Now I'm going to go over to the source document
7 and show you that source document also ends in 84212.

8 A. Okay.

9 Q. This is the document that's the slide was made from,
10 wasn't it?

11 A. Apparently.

12 Q. Okay. Now, what I'd like to ask you about is, on the
13 slide, the NIRT priority box was squared up. Do you remember
14 that?

15 A. Where was this?

16 Q. On the slide --

17 A. Okay. Yes.

18 Q. -- the NIRT priority box was squared up?

19 A. Okay.

20 Q. Do you remember? And that was one of three columns here.
21 But it appears, doesn't it, ma'am, that the slide only shows
22 these three columns, and it cuts off remaining columns to the
23 right, doesn't it?

24 A. Yes.

25 Q. And what the slide did is it looked at the minimization

1 of drive testing row. Correct?

2 A. Maybe we can check to the other slide.

3 Q. Happy to. Happy to. Let's go back to the slide that was
4 in opening. Do you see the minimization of drive testing
5 where it was identified?

6 A. Yes.

7 Q. Okay. And it identified that as a high-1, and that was
8 highlighted as well, wasn't it?

9 A. Yes.

10 Q. Okay. But if we look over to the rows that were cut off
11 of the slide that was shown in opening, there is another row
12 that talks about deployed. Do you see that?

13 A. I see that row, yes.

14 Q. And the answer as to whether the feature is deployed by
15 AT&T is no, isn't it?

16 A. Well, I see that in this column there is a no, but I have
17 absolutely no background information of where this slide is
18 coming from and what it means, so...

19 Q. Do you know who put this slide together?

20 A. No.

21 Q. Under auto on, whether it's automatically on, the entry
22 in there is no as well, isn't it?

23 A. I can see that on that slide, but I have no idea what it
24 means.

25 Q. If we go over to feature activation, whether it's part of

1 the feature activation for AT&T, this document says no,
2 doesn't it?

3 A. I cannot make an interpretation. I can see that in this
4 column, this row, there is a no, but what's the meaning, I
5 cannot...

6 Q. Well, the deployed box wasn't on the slide that we saw in
7 opening, was it?

8 A. I don't think so, no.

9 Q. The auto on box was not on the slide we saw in opening,
10 was it?

11 A. No. I cannot remember seeing it.

12 Q. The feature activation box was not on the slide we saw in
13 opening, was it?

14 A. I do not remember seeing it.

15 Q. Why was the slide cut off to eliminate information that
16 would have shown to the jury that this feature by AT&T isn't
17 activated, isn't automatically on, and isn't deployed as of
18 Q2, 2021?

19 A. Like I said before, I've never seen this slide before. I
20 don't know.

21 Q. Do you consider that to be relevant information here?

22 A. What?

23 Q. That it's not deployed activated and it's not
24 automatically on in the AT&T network?

25 A. I don't know whether that's represented in the slide.

1 Q. So, Ms. Gerritse, I heard you say that you manage the
2 prosecution of the '089 drive testing patent?

3 A. I call it coordinated it, yes.

4 Q. Coordinated the prosecution?

5 A. Yes.

6 Q. And what does it mean to prosecute a patent?

7 A. It is the whole process, from disclosure you receive from
8 the inventor, and then we have to have a draft provided by
9 usually outside counsel, and then we file the patent
10 application at the European Patent Office usually and later on
11 in other countries. And then you can receive from the Patent
12 Office's office actions that need to be entered. That's up
13 until the end of the patents in the different countries, and
14 that's the whole process of prosecution.

15 Q. And before filing this lawsuit, KPN sent an email to
16 Ericsson with this patent and other patents, didn't it?

17 A. Yes, we did.

18 Q. In fact, you drafted and sent that email. Correct?

19 A. Yes. January 2017.

20 Q. And attached to that email was a claim chart for the '089
21 Patent. Right?

22 A. No, for the European patents in the patent family.

23 Q. The European counterpart to the --

24 A. Yes.

25 Q. But that was a claim chart that was intended to apply to

1 the whole family of patents. Correct?

2 A. No, not necessarily. At that moment it applied to the
3 '495 to the EP counterpart.

4 Q. But you also identified in that claim chart other
5 counterparts, didn't you?

6 A. That we had other counterparts, yes.

7 Q. Including U.S. counterparts?

8 A. That's right.

9 Q. Okay.

10 THE COURT: Let's make sure you both pause between
11 the other one speaking so we don't get any conflict in the
12 record, please.

13 Q. (BY MR. STEVENSON) And were you involved in the
14 preparation of that claim chart?

15 A. No.

16 Q. But you did transmit it on behalf of KPN.

17 A. That's true.

18 Q. And that claim chart you're saying was an assertion
19 against Ericsson that they needed a license under that patent.

20 A. The claim charts presented one way of infringing the
21 claims of the patent.

22 Q. And that's what you were accusing Ericsson of doing.

23 A. Yes.

24 Q. Okay.

25 MR. STEVENSON: Your Honor, may we approach?

1 THE COURT: Approach the bench.

2 (The following was had outside the hearing of the
3 jury.)

4 MR. STEVENSON: I'd like to ask the witness about
5 the claim chart now. She is the prosecuting attorney. She
6 worked for the inventor. She transmitted it to Ericsson and,
7 candidly, is the only witness in this case I can ask about the
8 claim chart.

9 THE COURT: What's KPN say?

10 MR. HEALY: KPN's position is she's not a technical
11 person. She testified she had no involvement in preparing the
12 claim chart. She just forwarded it along. And I think what
13 counsel is trying to get into is a blow-by-blow analysis of a
14 technical issue that they can talk to an expert about or
15 should have had their expert opine about.

16 It's not an appropriate thing for a fact witness -- he
17 wants to get expert testimony off the cuff from a non-expert
18 witness.

19 THE COURT: What is it you are trying to do, Mr.
20 Stevenson?

21 MR. STEVENSON: I am trying to show the allegations
22 that were made by KPN at the time they sent the claim chart.
23 I'm not asking for opinion. I just want her to go ahead and
24 read the document and say, here is what we alleged because
25 later with our witnesses we're going to show that we don't do

1 what they allege in the claim chart. Their theory is
2 eventually changed.

3 And a lot of this back and forth in the negotiations
4 which we've heard an awful lot about has to do with technical
5 disagreements. And the basis of the technical disagreement is
6 we think they're just wrong about their claim chart. This is
7 the same language that is at issue in this case. It's the
8 exact issue that we're having in this case, which is this
9 whole issue about one or two networks and configurations.

10 And this is the position they took with us, and they say
11 we are a willful infringer, and we disagree. And I think we
12 should be able to show that we don't do and we have a very
13 strong non-infringement argument as to the theory they
14 presented to us in the beginning of the negotiations.

15 MR. HEALY: Willful infringement, Your Honor,
16 depends upon notice of a charge of infringement. We very
17 specifically did not talk about the claim charts because this
18 witness cannot talk about the claim charts and we don't want
19 to open any doors.

20 What he wants to do is say KPN's position changed, isn't
21 that inconsistent, and use it to attack our infringement
22 theory. Your Honor has already ruled in MIL 7 that these
23 claim charts pre*Markman* -- *Markman* positions in terms of
24 contentions not relevant evidence. The evidence of
25 infringement is for the experts to decide and it's for the

1 experts to talk about. He just said that his own expert
2 witness is going to address this. So why does he need to talk
3 about them with my fact witness who has no technical
4 background at all?

5 THE COURT: That's a good point.

6 MR. STEVENSON: She is a European patent attorney,
7 and she sent this to us. And their whole position in this
8 case is that we're willful because, you know, the negotiations
9 dragged out. The truth is we were arguing about this and
10 other patents. And I think we should be entitled to show what
11 they sent us, what it says, and just stop at what it says.
12 Here's what you sent us, here's the position you took when you
13 put it out there, and then I'll move on.

14 MR. HEALY: The document in the record, given you'll
15 be able to show it to your witness, your expert witness, and
16 you're going to be able to ask him all these questions.
17 What's the point of asking a fact witness? I mean, he wants
18 to ask her off-the-cuff questions and -- and ask a
19 non-technical person expert questions. This is inappropriate,
20 Your Honor. This is what we're concerned about at this point.

21 MR. STEVENSON: Because Ms. Gerritse sent it to us
22 and participated in the technical negotiations.

23 MR. HEALY: You've already established who sent it.
24 You've established the number. You can show your witness the
25 number and your expert can address to the extent it's in his

1 report. There is no need to ask a witness who has no idea
2 about a document questions about it, particularly a technical
3 document to a non-technical, non-expert witness.

4 THE COURT: Well, she is the corporate
5 representative of KPN, and I think in that posture it's
6 appropriate for her to confirm these were sent by the company.

7 But beyond confirming they were sent, I think any
8 internal or granular discussion about what they do say,
9 especially if your expert's going to opine on them, is beyond
10 her -- it's beyond her capability as a patent lawyer who by
11 her own testimony coordinated some of the prosecution here but
12 didn't handle the intricacies of it.

13 I have no problem with you getting her to confirm what
14 was sent and that they went from KPN to Ericsson, but that's
15 where you need to stop, Mr. Stevenson.

16 MR. STEVENSON: Thank you.

17 (The following was had in the presence and hearing
18 of the jury.)

19 Q. (BY MR. STEVENSON) Going back to the claim charts, Ms.
20 Gerritse --

21 THE COURT: Counsel, reapproach the bench just for a
22 minute.

23 (The following was had outside the hearing of the
24 jury.)

25 THE COURT: When I said that she can confirm that

1 they were sent from KPN to Ericsson, part and parcel of that
2 is she can confirm that that was KPN's position at the time
3 they were sent, but that's where we stop.

4 MR. STEVENSON: Thank you.

5 (The following was had in the presence and hearing
6 of the jury.)

7 THE COURT: All right. Let's proceed.

8 MR. STEVENSON: May we have DX 151, please?

9 Q. (BY MR. STEVENSON) So is this the claim chart for the
10 European version of the '089 Patent, drive testing patent, Ms.
11 Gerritse?

12 A. Yes.

13 Q. And that patent, although it covers the European patent,
14 would also cover the family of patents. Correct?

15 A. Well, we would have to compare the claims of the EP
16 patents with the family member patents.

17 Q. Okay. And it states, though, that there's a United
18 States of America patent, 8,626,175. Correct?

19 A. Yes, that's correct.

20 Q. And that is the predecessor patent to the one that's
21 being asserted in this suit, isn't it?

22 A. Yes. That was the number before it got reissued, yes.

23 Q. And this reflected your position at the time you sent it.
24 Correct?

25 A. Yes.

1 Q. And this was your position on how the claim should be
2 read against the 3GPP standard. Correct?

3 A. Yes. Like I said, it was one way.

4 Q. Thank you. That's all I have on this.

5 Now, let me ask you a little bit about your technical
6 background.

7 A. Yes.

8 Q. Now, you told me you managed the prosecution or were
9 involved and coordinated the prosecution of the -- the patent.
10 Did you work with the inventors?

11 A. I had meetings with the inventors, yes.

12 Q. Okay. And did you help in drafting or preparation of the
13 patent specification at all?

14 A. No, not really. I outsourced that to outside counsel.

15 Q. Okay.

16 A. So once we decide we want to draft a patent application
17 for an invention, we bring the inventors and the outside
18 counsel in contact with each other and they draft the patent
19 application.

20 Q. Okay.

21 THE COURT: Please try to speak up.

22 THE WITNESS: Yeah.

23 Q. (BY MR. STEVENSON) Let's talk a little bit about the
24 history between Ericsson and KPN.

25 Now, you agree with me, don't you, that KPN and Ericsson

1 had from 2004 to 2017 a series of voucher agreements. Right?

2 A. Yes, that's right.

3 Q. And you gave the total amount of that around 40 million,
4 but that was over a course of 14 years, wasn't it?

5 A. Yes.

6 Q. Okay. And on average KPN was paying 1 to 3 million
7 dollars a year or, excuse me, KPN was receiving in vouchers
8 about 1 to 3 million dollars a year from Ericsson. Correct?

9 A. Yes, correct.

10 Q. Okay. And over those years, you also were aware that KPN
11 had been asserting over and over again at each renewal that
12 Ericsson needed to take a license agreement. Right?

13 A. Yes.

14 Q. And you understand, though, that in many of these
15 meetings, historically, Ericsson analyzed the patents and told
16 KPN that it didn't think it was infringing them.

17 A. Personally I was only involved in the negotiations
18 starting in 2017.

19 Q. But as the corporate representative of KPN, do you
20 understand the history was that Ericsson at these inflection
21 points for renewal would say, we don't think we infringe your
22 patents?

23 A. What was your question?

24 Q. Do you understand that at the inflection points when
25 these agreements would come up for renewal, Ericsson would

1 meet or speak with KPN and say, we don't think we infringe
2 your patents?

3 A. Yes, I understand that.

4 Q. Right. But the deal that Ericsson did was they would do
5 a voucher deal which would give KPN a discount on purchases
6 from Ericsson. Right?

7 A. Well, it gave a voucher that we could use as a credit to
8 buy Ericsson equipment which we would have bought anyway.

9 Q. Right. And it gave you -- it gave you a discount.

10 A. Well, I wouldn't call it a discount. It doesn't feel
11 like a discount.

12 Q. Well --

13 A. It is real value for KPN because they received credits
14 for a number of millions, and what we spent in credits in
15 vouchers we would not have to spend in cash.

16 Q. But you understand, of course, KPN was a significant
17 customer of Ericsson's.

18 A. Yes.

19 Q. And you've heard the old expression, you can't win an
20 argument with a customer?

21 A. I've heard that before, yes.

22 Q. Okay. And over the years KPN and Ericsson agreed to
23 disagree as to the merits of KPN's patent assertion, didn't
24 they?

25 A. Yes.

1 Q. So let's talk about how that agreement to disagree
2 between Ericsson and KPN over all these years got papered up.

3 The agreement was structured as a voucher and a
4 non-assertion agreement. Right?

5 A. Yes, we've seen that. That's right.

6 Q. And under the non-assertion agreement, KPN did not
7 actually grant Ericsson a license under its patents; it
8 granted a contractual promise not to sue Ericsson. Correct?

9 A. That's correct.

10 Q. And let's talk about what a license is. If somebody
11 infringes a patent, they can go to the patent owner and get
12 permission, and that's called a license, isn't it?

13 A. There is one way of getting to a license, yes.

14 Q. Right. And what a license is, it's a contract. Correct?

15 A. Yes.

16 Q. And sometimes money is paid, sometimes other
17 consideration is given, but it's a written contract between
18 two companies. Right?

19 A. Yes.

20 Q. And it's basically giving a company that would otherwise
21 infringe a patent permission to do what's in the patent.
22 Right?

23 A. That's a license, yes.

24 Q. But you and I will agree, won't we, that if you don't
25 infringe a patent you don't need a license to that patent.

1 Fair?

2 A. Yes.

3 Q. So under the non-assertion agreement, let's talk about
4 how it worked. KPN promised not to file any lawsuits against
5 Ericsson on KPN patents. Correct?

6 A. That's correct.

7 Q. And in return, Ericsson agreed not to file any lawsuits
8 against KPN as to Ericsson's patents. Right?

9 A. That's right.

10 Q. Now, historically, before 2017 Ericsson had never accused
11 KPN of infringement or asserted patents against it, had it?

12 A. That's right.

13 Q. You were a customer. Right?

14 A. Yes.

15 Q. Okay. But these non-assertion agreements kept getting
16 done. And will you agree with me, ma'am, that the fact that
17 Ericsson has entered into these non-assertion agreements
18 historically with KPN is no admission of any kind that
19 Ericsson infringes a single KPN patent? Will you agree with
20 me?

21 A. Yes, I can agree with that.

22 Q. In fact, that's written in the contract, isn't it?

23 A. Yes.

24 MR. STEVENSON: Let's look at PX 269, please.

25 Q. (BY MR. STEVENSON) This is the non-assertion agreement,

1 isn't it?

2 A. Yes, it is.

3 MR. STEVENSON: Let's go to the second page, please,
4 and zoom in on the C at the bottom.

5 Q. (BY MR. STEVENSON) And this is what we were talking
6 about just then, weren't we?

7 A. Yes.

8 Q. "Nothing in this agreement will be construed as an
9 admission of infringement of patent and/or other intellectual
10 property rights." Correct?

11 A. That's correct.

12 Q. Okay. So what was going on between KPN and Ericsson is
13 you were agreeing to disagree for over a decade.

14 A. Yes.

15 Q. Let's talk about now how the financial part of the deal
16 worked.

17 MR. STEVENSON: We can take this down.

18 Q. (BY MR. STEVENSON) There -- you will agree with me,
19 won't you, that for instance in the 2014 agreement there
20 was -- the voucher agreement was structured as a discount.

21 A. Can you put it on the screen?

22 Q. Well, I can, but I'd like to ask you what you remember
23 about it. Was it structured as a discount or you don't
24 remember?

25 A. What do you mean was structured as a discount? It was a

1 voucher agreement.

2 Q. Okay. Well, let's look at it.

3 A. Yes.

4 MR. STEVENSON: Let's pull up DX 414 at 3. Let's go
5 back to the front page just so the witness can get context,
6 please. Page 1, please. Thank you.

7 Q. (BY MR. STEVENSON) Does this appear to be the 2014
8 voucher agreement?

9 A. I see no year here, but --

10 MR. STEVENSON: If you'd zoom out, Mr. Moreno, and
11 go to the signature page at the end.

12 THE WITNESS: Yes. This was the 2014 agreement.

13 MR. STEVENSON: There we go. All right. We can go
14 back to page 3 of it, please.

15 Q. (BY MR. STEVENSON) So let's talk about how the
16 financials of this work.

17 MR. STEVENSON: And zoom in, please, on the A and B
18 paragraph right under your cursor, sir, right under -- there
19 you go.

20 Q. (BY MR. STEVENSON) So let's talk about exactly how this
21 voucher deal worked.

22 Ericsson would give KPN a voucher of 500,000 Euros per
23 year if KPN had sales of more than 50 million Euros in that
24 year. Correct?

25 A. That's correct.

1 Q. And let's talk about -- we talked a lot about Euros.

2 Today a Euro is about equal to a dollar. Right?

3 A. At the moment I think so, yes.

4 Q. Back then, do you remember what the --

5 A. I think 1.2 is what we keep on average, yes.

6 Q. So -- and it varies from year to year, but I think you
7 and I can agree it's somewhere between even and 1.2 --

8 A. Yes.

9 Q. -- which would have meant this, in U.S. dollars, might
10 have been \$600,000?

11 A. Yes.

12 Q. But if KPN didn't buy 50 million Euros' worth of
13 equipment, how much would it get in a voucher from Ericsson
14 that year?

15 A. It is nothing.

16 Q. Okay.

17 A. At this day of signing the agreement, we knew that we
18 were going to spend it.

19 Q. Right. And you understand that Ericsson would do this
20 because they want to incentivize you to remain a customer.
21 Right?

22 A. Could be. I don't know what Ericsson's motives were, but
23 I know what KPN's motives were.

24 Q. But it's -- it's pretty financially obvious, isn't it?
25 If you spend 50 million Euros with us, we'll give you a

1 \$500,000 voucher to use on your next going forward chunk of
2 sales?

3 A. Yes.

4 Q. And that works out to one percent, doesn't it?

5 A. Yes.

6 Q. Okay. Then the second -- there is a second part of this,
7 though, in B. And it says, if KPN does spend more than 50
8 million Euros, it gets an additional 1.5 percent discount.
9 Correct?

10 A. Voucher, yes.

11 Q. And in prior years before 2014, there was also a voucher
12 arrangement between the two parties, wasn't there?

13 A. Yes.

14 Q. Okay. So let's now talk about the renewal negotiations.

15 So when you approached Ericsson in 2017 and you sent an
16 email to them saying we'd like to start, I believe it was, in
17 January we'd like to start having renewal negotiations --

18 A. Yes.

19 Q. -- you were talking about negotiating another voucher
20 agreement that would cover the whole portfolio. Right?

21 A. A non-assertion would cover -- yeah, in combination of
22 the non-assertion agreement and a voucher agreement would
23 cover the whole portfolio.

24 Q. And let's talk about what that means. What we've talked
25 about the whole history before 2017, all these prior deals,

1 what I think we agree upon is they covered KPN's whole
2 portfolio.

3 A. Yes.

4 Q. That was a non-assert as to every patent KPN owned.
5 Right?

6 A. And it refers to every patent Ericsson owned.

7 Q. But it covered every patent KPN owned. Right?

8 A. Yes.

9 Q. And before 2017 you had never presented to Ericsson your
10 '089 Patent. Correct?

11 A. Correct.

12 Q. And how many patents do you have in your portfolio?

13 A. Patents around 1500.

14 Q. And how many were you asserting in 2017 that Ericsson
15 might need to take a look at for purposes of valuing your
16 portfolio?

17 A. Oh, I've not really counted that. We provided an
18 overview, but...

19 Q. So you and I -- are you finished?

20 A. Yes.

21 Q. Okay. You and I will agree, though, that many, many
22 companies have thousands of patents in their portfolio.

23 A. Yes.

24 Q. But frequently when you go to license with someone, only
25 a small number of them have real value.

1 A. A small number, yes, has -- are driving the deal, yes.

2 Q. Right. And so when licensing professionals get together
3 and negotiate, one of the issues they have is finding the
4 patents that matter to this company at this time. Fair?

5 A. Yes, that's fair.

6 Q. Okay. And so what you did to see what patents might
7 matter to Ericsson at this time is you sent them a batch of
8 claim charts in January of 2017. Right?

9 A. Yes, and the separate overview of all the patents, yes.

10 Q. Okay. And then the parties got together and had a number
11 of technical discussions and debates over whether those
12 patents that you sent to Ericsson -- were used by Ericsson,
13 might be infringed by Ericsson equipment. Correct?

14 A. No, that's not correct.

15 Q. Oh, you received a technical response from Ericsson,
16 didn't you?

17 A. Ultimately we received one technical expert, yeah.

18 Q. And you had meetings about them. Correct?

19 A. One meeting, yes.

20 Q. Okay. Where the technical details were discussed and
21 there was a debate over the positions Ericsson was taking.

22 A. No, there was no real debate.

23 Q. Well, you -- you've seen the emails, haven't you?

24 A. Yeah, but there is no meeting. Those were emails. We
25 had one meeting where Ericsson shortly provided their vision

1 of our patents.

2 Q. Let's talk about the emails.

3 And do you have the cross binder at your desk?

4 A. No.

5 Q. It may be on the witness stand behind you?

6 A. That's KPN.

7 MR. STEVENSON: May I approach to give the witness a
8 cross binder? We gave one to your counsel, and I apologize,
9 ma'am.

10 THE COURT: We have an extra one.

11 MR. STEVENSON: Thank you.

12 Q. (BY MR. STEVENSON) We looked at a lot of emails in your
13 direct examination, didn't we?

14 A. Yes.

15 Q. And many of them were written by Mr. --

16 A. Wuyts.

17 Q. Wuyts. Who's the head of licensing at KPN?

18 A. The head of the IPR department, yes.

19 Q. And is he your boss?

20 A. He's my boss, yes.

21 Q. And you made the point about -- in your direct
22 examination you didn't think Ericsson was willing to take a
23 license.

24 A. Yes, I agree with that, yes.

25 Q. But isn't it true that throughout these negotiations

1 Ericsson consistently told you it was happy to enter into a
2 license agreement, but first it needed to see KPN patents that
3 had technical merit and Ericsson was using?

4 A. Well, they said that on a few occasions. In general,
5 they were just not replying, delaying, evasive answers,
6 premature to discuss.

7 MR. STEVENSON: I'm going to object as
8 non-responsive.

9 THE COURT: Overruled. You characterized it one way
10 in the question and she characterized it one way in the
11 answer.

12 Q. (BY MR. STEVENSON) Didn't Ericsson tell you in October
13 of 2019 it was happy to take a license but it needed to see
14 patents from KPN that it really believed that it needed and
15 needed to use?

16 A. Yes.

17 Q. And didn't they tell you that again in December of 2019
18 the same thing--we're happy to take a license from KPN, but we
19 need to see patents that we believe we need a license to and
20 that we use?

21 A. 'Happy' is probably not a word I would use, but they were
22 willing to take a license.

23 Q. We were willing to take a license but we wanted to see
24 patents --

25 A. Yes.

1 Q. -- that we actually used.

2 And now you understand we're talking in 2017 about a
3 license. Correct?

4 A. Yes.

5 Q. The prior deals were non-assert for the prior 14 years.
6 Now we're talking about a license agreement. Right?

7 A. No. I think we were suggesting -- we were proposing a
8 continuation of the non-assert and voucher agreement. It's
9 not a license agreement.

10 Q. Now, we saw a lot of emails you selected to show to the
11 jury, but would you agree with me that KPN wrote a fair number
12 of emails to Ericsson that got a bit testy over time?

13 A. Testy?

14 Q. Testy.

15 A. I do not understand the word 'testy'.

16 Q. Ill-tempered.

17 A. Ill-tempered. Well, we've sent a number of emails
18 voicing our frustration.

19 Q. Okay. Well, let's go through some of the things that
20 were said, and I'll see if you remember, and if you don't I'm
21 happy to look into the emails in the witness binder.

22 But do you remember in September of 2019 KPN sent a group
23 of claim charts -- 5G claim charts to Ericsson.

24 A. Yes.

25 Q. Okay. And then you requested a meeting with Ericsson,

1 didn't you?

2 A. Yes.

3 Q. And Ericsson wrote back to you and asked you to, quote,
4 "Clarify which patents would, in your opinion, be subject to
5 such a discussion at that meeting."

6 Do you remember that?

7 A. Yes.

8 Q. And in response, you accused Ericsson of delay tactics
9 because they asked you to say which patents you wanted to
10 speak about.

11 A. I cannot remember that. Maybe it's best to go over the
12 email.

13 Q. Do you remember you refused initially to even discuss the
14 claim charts you'd sent Ericsson?

15 A. I do not remember that, no.

16 Q. Before we look -- and we'll look at the email, but before
17 we do let's talk about what a claim chart is.

18 You've dealt with claim charts in much of your career,
19 haven't you?

20 A. Yes.

21 Q. And a claim chart is something that patent lawyers use to
22 communicate with each other about what we'll call whether a
23 patent is being used or infringed.

24 A. Well, that's a very broad definition of a claim chart.

25 Q. All right. But to talk about what a chart is, what it

1 usually does is it takes the claim of the patent and compares
2 it to what the patent owner would consider to be proof that
3 the claim is met. Right?

4 A. That's right.

5 Q. Right. And so the jury can understand what we're talking
6 about when we talk about claim charts, the reason we do them
7 is each claim has a number of elements to it, doesn't it?

8 A. A number of features, yes.

9 Q. Right. And we saw some in the slides what a claim looks
10 like, and I think the jury will see them later. But you've
11 dealt with claims in your career. Right?

12 A. Yes.

13 Q. And you understand that for a claim to be infringed,
14 every single element of that claim needs to be met in an
15 accused device.

16 A. Yes, device mattered.

17 Q. And so what patent lawyers do is, to make sure they don't
18 miss an element they take every element and they put it in a
19 chart form, don't they?

20 A. Yes.

21 Q. And what the chart looks like is, it's a number of rows,
22 and each row has one of the elements on the left and then over
23 to the right there's usually information about what is being
24 accused of infringement and maybe some comments. Correct?

25 A. That's correct.

1 Q. And that's how you structured your claim charts that you
2 sent to Ericsson, didn't you?

3 A. Yes.

4 Q. Okay. But you understand -- frequently those are the
5 subject of debate?

6 A. Yes.

7 Q. I mean, sometimes companies send KPN claim charts and
8 contend that they need to take a license to something. Right?

9 A. Yes.

10 Q. And you don't just take it at face value and say, Well,
11 they sent us a chart; we need to pay them. You review the
12 chart, don't you?

13 A. Yes, of course.

14 Q. Right. And frequently the chart is incorrect. Sometimes
15 there's mistakes or you have a disagreement over what they
16 claim is being covered. Fair?

17 A. That's right.

18 Q. And it's not unfair for Ericsson to do that in its
19 dealings with KPN.

20 A. No, that's not unfair.

21 Q. Right.

22 A. It took them a long time to do it.

23 Q. But it's not unfair for a company that you send a claim
24 chart and say is infringing to have a technical discussion
25 with you where they disagree with you. There's nothing unfair

1 about that at all, is there?

2 A. No. We do it all the time.

3 Q. There's nothing unwilling about that, is there?

4 A. No that's not unwilling, no.

5 Q. That happens all the time in the industry. That's what
6 licensing professionals do--they sit down and have these
7 discussions, don't they?

8 A. Yes, but the timing is an issue.

9 Q. So let me ask you to turn to page -- excuse me, PX 587.
10 And that's one of the documents in there. Excuse me. I'll
11 ask you to go to PX 589.

12 A. 589. Yes. I'm there.

13 Q. Okay. And I'm going to move forward a little bit, but
14 Ericsson sent you a technical response to the claim charts
15 that you sent, didn't they?

16 A. By that time, let me think. I don't think so yet.

17 Q. Well, let's look -- have you look at the email?

18 A. This is an email.

19 Q. That's at 589. And I'll have you turn to the third page.
20 Tomas Dannelind sent you an email on December 12th, didn't he?

21 A. Yes. Okay, yes.

22 MR. STEVENSON: And if we can pull that up, please.
23 Pull up 589, please. And can you zoom in on the Dannelind
24 email? Go up a little bit. The one above it, please.

25 Q. (BY MR. STEVENSON) Mr. Dannelind says, "Please find

1 attached our position having analyzed all claim charts
2 received from KPN."

3 Do you remember that?

4 A. Yes.

5 Q. And he told you, "Please get back to us with regards to
6 any questions you might have related to our analysis or
7 conclusions."

8 A. Yes, I see that.

9 Q. He told you, We documented our analysis thoroughly and
10 will be able to provide more details.

11 A. Yes, I see that he said that.

12 MR. STEVENSON: Okay. And we can take that down.

13 Q. (BY MR. STEVENSON) And then if we go to the second page
14 of this exhibit, this is the response of Mr. Wuyts. He
15 responded by calling this, on the fifth line, "an unwilling
16 licensee trick," didn't he?

17 A. Yes.

18 Q. He also said in the next section --

19 A. What he said is that for all the cases except the 5G
20 charts it is an unwilling licensee trick. In the 5G charts we
21 provided shortly before, but all the other cases we provided
22 in 2017. And if you come back then in October 2019 with your
23 first reply, that's delaying, that's unwilling, I would say,
24 yes.

25 Q. And Ericsson also in its technical analysis challenged

1 the validity of several KPN patents, didn't it?

2 A. Yes.

3 Q. And that happens all the time in negotiations, doesn't
4 it?

5 A. Yes.

6 Q. Nothing unwilling or not standard about a company who you
7 make a patent assertion against coming back and saying, We
8 think there's prior art that renders your patent invalid?

9 A. Agreed.

10 Q. That's perfectly fair. Right? And that's something that
11 Ericsson did, didn't it?

12 A. Yes.

13 Q. And what he said in his responsive email, Mr. Wuyts to
14 Ericsson, is he's going to disregard the invalidity dreams
15 recited in the Ericsson slide set. Is that what he said?

16 A. Well, he said that he's doing that because the form of
17 the novelty charts was no manageable for us.

18 Q. And then the next one he said to us he didn't think we
19 read your patents or, at most, we spent 20 minutes on the
20 analysis?

21 A. That was the impression we had, yes.

22 MR. STEVENSON: We can take that down now.

23 Q. (BY MR. STEVENSON) And so, finally, it got to the point,
24 didn't it, Ms. Gerritse, that Ericsson wrote back to you in
25 March of 2020 and said there was a disturbing trend in what

1 you guys were sending to Ericsson in terms of emails. Do you
2 remember getting that?

3 A. No, I do not remember it, no.

4 Q. I'll have you look in your book. It's the document
5 that's KPN-Ericsson Bates No. 56227. It may refresh your
6 recollection.

7 A. 56227?

8 Q. Correct. It's going to say KPN-Ericsson 56227 on the
9 tab. It's about the halfway point, a little past it.

10 A. What do you want me to look specifically?

11 Q. Mr. Dannelind sent you a March 5th, 2020, email. He sent
12 it to Mr. Wuyts?

13 A. Uh-huh.

14 Q. Copied you, didn't he?

15 A. Uh-huh.

16 THE COURT: Just a minute.

17 THE WITNESS: Yes.

18 THE COURT: You're going to need to answer verbally
19 and out loud.

20 THE WITNESS: Yes.

21 THE COURT: Let's continue.

22 Q. (BY MR. STEVENSON) Do you remember, now having looked at
23 this, in the fourth line Mr. Dannelind said that "Your email
24 correspondence has shown an increasing trend of inflammatory
25 comments"?

1 A. I see that, yes.

2 Q. He told you that rather than addressing Ericsson's
3 positions on the merits, instead your emails tell a partial or
4 mischaracterized story?

5 A. I see that.

6 Q. He said it was a failing effort to cast Ericsson as an
7 unwilling licensee.

8 A. Yes.

9 Q. And then in the next paragraph he said, "Ericsson has a
10 deep respect for intellectual property rights"?

11 A. Yes.

12 Q. And to that Mr. Wuyts responded the same day, "I think
13 the tone of your email is definitely something you wouldn't
14 wish to attach to an email."

15 Is that how he responded?

16 A. Yes.

17 Q. Let's talk a little bit, then, about the reason KPN sent
18 claim charts to Ericsson.

19 I heard you testify that in 2017 the reason you sent
20 claim charts on patents to Ericsson is you wanted Ericsson to
21 give you value, to give you credit in the negotiations for
22 renewal for new patents you'd gotten. Right?

23 A. Well, that's a summary of the situation.

24 Q. Okay.

25 A. We -- I mean, the existing non-assertion agreements and

1 voucher agreements were about to expire and we invited
2 Ericsson to start discussions about the renewal and informed
3 them about our new patents.

4 Q. And you wanted to make more in voucher agreements. You
5 wanted to get more, this renewal, than you had the last time?

6 A. Yes.

7 Q. And you wanted to send your patents to Ericsson to
8 convince them that you had more patent value than last time.
9 Correct?

10 A. Yes.

11 Q. Is this -- and after Ericsson reviewed and responded to
12 KPN's patents, Ericsson, in fact, asked you to send it more
13 claim charts, didn't it?

14 A. I cannot remember that.

15 Q. Let's look at the correspondence.

16 MR. STEVENSON: Will you pull up PX 589 and go to
17 page 3?

18 Q. (BY MR. STEVENSON) So this is the email we looked at
19 just a moment ago, didn't we?

20 A. Yes.

21 Q. Tomas Dannelind December 12th, 2019 email?

22 A. Uh-huh.

23 MR. STEVENSON: Let's blow out the second paragraph,
24 please. Right there.

25 Q. (BY MR. STEVENSON) And what Ericsson told you is, "if

1 you have any more claim charts you would like us to review,
2 please send these to us."

3 Do you remember that?

4 A. Yes I see it.

5 Q. "And that includes any implementation patents you might
6 have where you believe Ericsson should willingly sign a
7 license under those."

8 A. Yes.

9 Q. "However, without knowing or understanding why we need a
10 license, we will obviously be unwilling to sign a license."

11 A. Yes.

12 Q. So here Ericsson is telling you, you know, put your best
13 foot forward send us what you've got. Right?

14 A. Yes.

15 MR. STEVENSON: And then if you go down to the next
16 paragraph, please.

17 Q. (BY MR. STEVENSON) Ericsson observed it should be a
18 two-way street. Right?

19 A. Yes, they are providing us with their patents.

20 Q. All right. He said, "For the sake of reciprocity, KPN
21 offering Ericsson a license under KPN patents, we'll be giving
22 or offering KPN a license under Ericsson patents." Right?

23 A. Yes.

24 Q. And I thought I heard you say on direct that you thought
25 Ericsson's patents were valuable to KPN.

1 A. Definitely.

2 Q. And is there one particular patent you have in mind when
3 you say Ericsson's patents were valuable to KPN?

4 A. No, no particular patents. In general it's a big
5 portfolio. Ericsson charges a lot.

6 Q. And you understand that Ericsson, because it's a two-way
7 street, wanted KPN to review its patents to determine what
8 value they had to KPN. Fair?

9 A. Yes.

10 Q. Right. I mean, in other words, you and Ericsson were
11 sitting down talking about doing what's called a cross
12 license. Right?

13 A. That's what we had over the years, yes.

14 Q. Yes. What that means is it's like a trade, isn't it?

15 A. Yes.

16 Q. Right. So KPN comes to Ericsson and says, We have our
17 patents and we want you to give us fair value for our patents
18 to the extent you're using them. Right?

19 A. Yes.

20 Q. And the claim charts get reviewed and it goes back and
21 forth and there's a discussion about how valuable the patents
22 are and how much they're going to get used. Right?

23 A. That's normally the situation, yes.

24 Q. And then Ericsson said to KPN, All right. If you want a
25 license to our patents, we want you to give us value and

1 credit for our patents.

2 A. Yes.

3 Q. And to do that, Ericsson was proposing to send you
4 patents and claim charts that it thought KPN might need and
5 find of value. Right?

6 A. They are proposing that, yes.

7 Q. And is it your testimony, ma'am, that if someone -- to be
8 a willing licensee, if someone approaches you and says, I've
9 got patents, I think you should look at them and consider
10 taking a license, let's have a discussion, that you should
11 receive those patents and analyze them and engage in good
12 faith?

13 A. Maybe normally, but we had -- the relation between
14 Ericsson and KPN was not really of that kind. We are not
15 equally situated companies. We are a customer of Ericsson.
16 We are an operator. We use equipment from Ericsson from other
17 suppliers that gives a whole different perspective to this
18 situation.

19 Q. And Ericsson has patents that you consider valuable to
20 KPN?

21 A. Yes.

22 Q. That KPN needs a license to?

23 A. At least we would appreciate to have a non-assert, yes.

24 MR. STEVENSON: So let's go in this exhibit to the
25 first page.

1 Q. (BY MR. STEVENSON) Do you recall, Ms. Gerritse, that one
2 day later after Ericsson said it was going to send patents to
3 KPN and that we wanted you to please consider them for what
4 the reciprocal value should be, your boss Mr. Wuyts wrote back
5 to Ericsson and threatened to sue Ericsson's customer Verizon.

6 A. Yes, I know that.

7 Q. Let's look at what he said.

8 MR. STEVENSON: Will you go down to paragraph 4 of
9 this email?

10 Q. (BY MR. STEVENSON) He said in 4, "Following in on the
11 suggestion of reciprocity, do we understand that you want us
12 to submit patent cases against Ericsson's unlicensed customers
13 such as Verizon?"

14 A. Yes, I see that.

15 Q. And you-all understood that Verizon was one of Ericsson's
16 most significant customer relationships in the world?

17 A. I don't know that.

18 Q. Well, they are one of the biggest carriers in the world.
19 Right?

20 A. Yes.

21 Q. And you knew Ericsson was a significant supplier of them
22 of equipment to them?

23 A. I didn't -- I personally don't know that, no.

24 Q. You didn't know?

25 A. Who was supplying equipment to which telecommunication

1 operator.

2 Q. You didn't know that Ericsson was supplying equipment to
3 Verizon, is that your testimony?

4 A. Personally I didn't know it.

5 Q. Well, you know it today, don't you?

6 A. Yes.

7 Q. Okay. And then it goes on to say, "Verizon under patent
8 court assertion of Huawei, that never sold any equipment in
9 the USA, definitely will not be pleased, to say it prudently."
10 What does it mean--"to say it prudently"?

11 A. This is English, but to say it carefully.

12 Q. So you're being careful with your words here with us?

13 A. Yes.

14 Q. Okay. "To understand that Ericsson wishes KPN to submit
15 patent cases against its customers." I mean, it's a serious
16 matter, isn't it, Ms. Gerritse, that you would threaten to sue
17 a significant customer of Ericsson like Verizon and suggest
18 that Ericsson was wishing that that happened or asking for it
19 to be done? I mean, you understand that's a serious thing to
20 say here.

21 A. Yes. That's true. I think it's a proof that we were
22 very frustrated at that moment in time.

23 Q. You also mentioned raising the point at the European
24 commission. They are regulators in Europe, aren't they?

25 A. Yes, it's European commission. Yes.

1 Q. And then you say, "Under these thoughts, we cannot make
2 any sense of the Ericsson approach suggested herebelow, being,
3 in short, an inducement or push to assert patents against
4 Ericsson's own customers."

5 A. Yes.

6 Q. Ma'am, you and I agreed that Ericsson just wanted to get
7 reciprocal credit for its patents and that's why they wanted
8 to send them to you, didn't it?

9 A. Well, like I said, asserting -- a supplier asserting
10 patents against an operator client is quite unusual.

11 Q. Well, you had with Ericsson a mutual non-assert for 14
12 years.

13 A. Yes. That was without.

14 Q. You just told us that Ericsson had valuable patents that
15 KPN needed.

16 A. That were valuable for KPN, yes.

17 Q. Right. And it's fair for Ericsson to want to get fair
18 consideration of its patents, isn't it?

19 A. Yes.

20 Q. I mean, you've heard the expression what's sauce for the
21 goose is sauce for the gander. Right?

22 A. Well, no, but I get the meaning.

23 Q. You get the meaning.

24 THE COURT: Let's avoid colloquialisms for a witness
25 who doesn't speak English that well, please. And asking her

1 to define English words is probably not a good idea either.

2 Let's move on.

3 Q. (BY MR. STEVENSON) All right. And the truth is,
4 Ms. Gerritse, Ericsson never filed an infringement case
5 against KPN, did it?

6 A. Not yet, no.

7 Q. It hasn't?

8 A. It hasn't, no.

9 Q. And this case has been pending for over a year, hasn't
10 it?

11 A. Yes.

12 Q. Okay. Now, I want to go forward --

13 MR. STEVENSON: We can take this down.

14 Q. (BY MR. STEVENSON) -- to a financial offer.

15 You recall that Ericsson and KPN had a licensing meeting
16 in March of 2020?

17 A. Yes.

18 Q. Was that by Zoom or was that by --

19 A. No that was --

20 Q. In person?

21 A. It was February 2020. That was one of the last in-person
22 meetings, yes.

23 MR. STEVENSON: Okay. And can we see Exhibit 396,
24 please?

25 Q. (BY MR. STEVENSON) Is this a slide show that KPN

1 presented to Ericsson --

2 A. Yes.

3 Q. -- at that meeting?

4 Now you didn't talk about this in your direct testimony,
5 did you, this slide, or this PowerPoint show?

6 A. Did we not show this one? No? Okay.

7 MR. STEVENSON: And if we'll go to page 4 of the
8 PowerPoint.

9 Q. (BY MR. STEVENSON) And I assume you were involved in
10 this in some way, shape, or form?

11 A. Yes.

12 Q. This shows some of the patents that were presented to
13 Ericsson?

14 A. Yes.

15 Q. And one of them is the second row, the 495.

16 A. Yes.

17 Q. EP. That's the European equivalent of the patent that's
18 being asserted here for drive testing. Right?

19 A. It's the '089, yes.

20 Q. Okay. So that was one of the patents that was under
21 discussion that you were trying to get credit for in the
22 licensing meeting.

23 A. Yes.

24 Q. This was one of the new patents that was awarded since
25 the last voucher deal that you wanted Ericsson to take note

1 of. Right?

2 A. That's right.

3 MR. STEVENSON: Okay. And let's go now to page 15
4 of the document.

5 Q. (BY MR. STEVENSON) You did a calculation here, didn't
6 you?

7 A. Yes.

8 Q. Okay. And what you did is you went year-by-year from
9 2004 to 2017?

10 A. Yes.

11 Q. And those are the columns across the top?

12 A. Yes.

13 Q. And that's when the prior non-assert and voucher
14 agreements were in place. Right?

15 A. Yes.

16 Q. And then you have a row -- the first one says 'GVA
17 return', and that's where you're looking at how much in
18 voucher discounts or voucher consideration KPN received that
19 year. Fair?

20 A. Yes, that's right.

21 Q. And then what we see happen is in 2004 it's 3.54 million.

22 A. Yes.

23 Q. So this comma is like a decimal point in the U.S. Right?

24 A. Yes.

25 Q. And this is in millions of Euros.

1 A. Yes.

2 Q. Which is a little bit more or about the same as a dollar.
3 Fair?

4 A. Yes.

5 Q. And then it goes up and down and fluctuates, but then in
6 2015, '16, and '17 it goes down significantly, doesn't it?

7 A. Yes.

8 Q. In 2015 it's 890,000?

9 A. That's right.

10 Q. In 2016, KPN received from Ericsson 540,000?

11 A. Yes.

12 Q. And then 610,000 in 2017?

13 A. Yes, that's right.

14 Q. And then what you did is you tried to look each year at
15 the number of patents in use.

16 A. Yes.

17 Q. So what you're doing here, I take it, ma'am, is out of
18 the thousands of patents that KPN owns, you're looking at how
19 many are actually applicable to Ericsson in that year.

20 A. Well, what we did is we looked back at the negotiations
21 and the technical discussions for the previous agreements and
22 then looked at Ericsson's statements about use or non-use of
23 the patents, and then we counted the patents that we thought
24 they were using.

25 Q. And -- right. And so out of the thousands of patents

1 that KPN had in 2004, you came to the conclusion that Ericsson
2 was using three of them?

3 A. Yes. W didn't have thousands of patents, but they were
4 using three of KPN's patents.

5 Q. How many patents did you have? This in 2004.

6 A. I don't exactly -- at the moment we had 1500. It must
7 have been much less in 2004.

8 Q. Hundreds?

9 A. Hundreds, yes.

10 Q. Oka. And that continues that Ericsson is using about
11 three KPN patents, or exactly three, until 2010. Right?

12 A. Yes.

13 Q. And you understand Ericsson didn't agree to this; this is
14 KPN's proposal or KPN --

15 A. This is our assessment, yes.

16 Q. It's your assessment to Ericsson?

17 A. Yes.

18 Q. And you understand Ericsson thinks it's zero.

19 A. I understand it, yes.

20 Q. But we now know where the goalposts are. Right? Sorry.
21 I just violated the Judge's order.

22 A. I don't understand that one.

23 THE COURT: Let's be careful about speaking over
24 each other. We've got two lawyers here, you both know about
25 the importance of keeping the record clear, and I've raised

1 this before. So remember you're not having a conversation
2 outside; you're in a courtroom. There is a record. Let's
3 keep it clean. All right?

4 Let's proceed.

5 MR. STEVENSON: Yes, Your Honor.

6 Q. (BY MR. STEVENSON) So starting, then, in 2011, there's
7 another renewal there. Right?

8 A. Yes.

9 Q. And you go to thinking that Ericsson is using five
10 patents of KPN.

11 A. Yes.

12 Q. And at this point does KPN have at least thousands of
13 patents?

14 A. A thousand, yes, maybe.

15 Q. Okay. And then we go up to 2014 and there's a fractional
16 assessment, 5.46 patents for the period of 2014 through 2016
17 and '17?

18 A. Yes, that's right.

19 Q. And is it fractional because some patents expired during
20 the course of that agreement?

21 A. Yes.

22 Q. And so you gave them partial credit?

23 A. Yes. You can see that in a few slides up where I made
24 this calculation, yes.

25 THE COURT: Ms. Gerritse, please make sure he's

1 finished with his question before you start answering. All
2 right?

3 THE WITNESS: Yes, sir.

4 THE COURT: Let's continue.

5 Q. (BY MR. STEVENSON) And then what you did -- and this is
6 the part --

7 MR. STEVENSON: You can eliminate the highlighting
8 there, Mr. Moreno. And I do want to highlight the 'GVA per
9 patent' column.

10 Q. (BY MR. STEVENSON) You calculated on a per-patent basis
11 how much voucher consideration Ericsson was providing to KPN.
12 Right?

13 A. Yes.

14 Q. Okay. And let me stop here and let's talk about the
15 significance of this. Now, you understand there's three
16 patents at issue in this lawsuit. Right?

17 A. Yes.

18 Q. The jury's not being asked to determine infringement of
19 the whole KPN portfolio. Right?

20 A. That's right.

21 Q. The jury's not being asked to determine the validity of
22 the whole KPN portfolio. Right?

23 A. That's right.

24 Q. The jury's not being asked to determine what a reasonable
25 royalty rate would be for the entire KPN worldwide portfolio.

1 Fair?

2 A. Yes.

3 Q. What's being adjudicated in this proceeding is three
4 patents as to whether valid, infringed, and what -- if they
5 are, what the damages would be for the United States of
6 America. Right?

7 A. Yes.

8 Q. And so you understand, one of the things that we have to
9 think about in this case is if your portfolio was worth X, all
10 your patents, what are the ones in suit really worth. Fair?

11 A. No, I don't think that's fair.

12 Q. Well, if a hundred apples are worth X, what are three
13 apples worth?

14 A. But that's not what we are looking at in this case. We
15 are looking at the value of one patent or of three patents but
16 per patent.

17 Q. Okay. Well, let's look at the value per patent that you
18 estimated in this document that you gave us in March of 2020.
19 What you did is you looked at how much Ericsson had been
20 providing in voucher discounts or other consideration to KPN,
21 and then you divided that by the number of patents you thought
22 Ericsson was using. Right?

23 A. That's right.

24 Q. And you got an average per patent rate, and for 2017, the
25 last year before the agreement expired, it was \$110,000 per

1 patent, wasn't it?

2 A. That's right.

3 Q. For the prior year, 2016, it was \$100,000 per patent.

4 A. Yes.

5 Q. And for the prior year to that it was \$160,000 per
6 patent.

7 A. Yes.

8 Q. Now, in your licensing presentations, you never single
9 out the '089 Patent and say this one is better than all the
10 rest.

11 A. No, we don't do that.

12 Q. Okay. But in here, in court, for that one patent for the
13 United States KPN is seeking \$31 million. Isn't that right?

14 A. That's right.

15 Q. Does KPN use the '089 Patent in its network?

16 A. The '089? Well, our equipment can do it. It's
17 configured in the equipment, and we have performed a trial
18 and we are now considering whether we will switch it on.

19 Q. So you haven't switched it on; you're considering.

20 A. At the moment we are considering switching it on, yes.

21 Q. So it's off today.

22 A. Yes.

23 Q. This is a feature that's been out there since 2016, and
24 as of today you haven't turned it on?

25 A. No.

1 Q. So KPN doesn't even use this feature that it's seeking
2 \$31 million for.

3 A. At the moment we don't, but we have future plans to do
4 it.

5 MR. STEVENSON: Pass the witness.

6 THE COURT: Is there redirect by the Plaintiff?

7 MR. HEALY: Yes, Your Honor.

8 THE COURT: Let's proceed with redirect.

9 REDIRECT EXAMINATION

10 BY MR. HEALY:

11 Q. Ms. Gerritse, I want to follow up on that last question.

12 Can you explain why KPN hasn't been able to switch on the
13 MDT functionality in its own networks?

14 A. Yes. It is because we cannot -- well, we have some
15 problems with the European privacy rules.

16 Q. So is that a legal requirement?

17 A. Yes, that's a legal requirement.

18 Q. And is that a European legal requirement?

19 A. Yes.

20 Q. Does that requirement apply here in the United States?

21 A. No.

22 Q. And Ms. Gerritse, counsel started off his presentation by
23 showing you a document, PX 71.

24 MR. HEALY: Mr. Boles, if we could bring that up.

25 Q. (BY MR. HEALY) Do you see in the bottom right-hand

1 corner here this is a document produced by Ericsson?

2 A. Yes.

3 MR. HEALY: And if we could pull up ON the left-hand
4 side.

5 Q. (BY MR. HEALY) At the bottom do you see it says
6 'restricted, attorneys eyes only'?

7 A. Oh, yes.

8 Q. Were you able to see this document before today?

9 A. No. And I think that's what I said in the beginning,
10 yes.

11 Q. Were you allowed to see this Ericsson document before
12 today?

13 A. No.

14 Q. Do you have any understanding of what this document
15 contains?

16 A. No.

17 MR. HEALY: And Mr. Boles, if we could bring up the
18 slide that counsel mentioned? Do you have the slide from the
19 opening, Mr. Boles? We'll circle back to that.

20 Mr. Boles, if we could get the slide up that we used
21 during opening for that slide. Thank you. This is it.

22 Q. (BY MR. HEALY) Now, this is the slide that Mr. Stevenson
23 showed you on the elmo. Do you see it on the screen?

24 A. Yes.

25 Q. Okay. Can you see it better now?

1 A. Yes.

2 Q. And if you look in the background, do you see that there
3 are a number of columns?

4 A. Yes.

5 Q. Does that include the columns that Mr. Stevenson
6 suggested to you we had omitted?

7 A. Yes.

8 Q. I want to speak to you next about a document that was not
9 placed on the screen, and Mr. Stevenson asked you about a
10 document KPN_Ericsson_56227. Do you see that this is the same
11 Bates number?

12 A. Yes.

13 Q. And Mr. Stevenson asked you some questions about this
14 document but he didn't show it to us on the screen. Right?
15 Do you recall that?

16 A. Okay. Yes.

17 Q. And Mr. Stevenson asked you -- suggested to you that
18 maybe KPN's tone in response was too short?

19 A. Yes.

20 Q. And do you see at the email below from Mr. Dannelind is
21 dated March 5th?

22 A. Yes.

23 Q. And unlike Ericsson in this case, KPN responded the same
24 day. Do you see that?

25 A. Yes, I see that.

1 Q. Okay. And the portion that Mr. Stevenson had you read
2 was the top sentence of this email. Correct?

3 A. Yes.

4 Q. Could you read the second sentence for me?

5 A. "If you wish to talk about this, always welcome to the
6 Netherlands to discuss face-to-face or call me. You have my
7 number."

8 Q. Did Mr. Dannelind take up KPN on its offer to discuss
9 this face-to-face?

10 A. No.

11 Q. Did Mr. Dannelind call Mr. Wuyts and say, Let's talk
12 about this?

13 A. To the best of my memory, no.

14 MR. HEALY: If we could bring up, Mr. Boles, PX 612.
15 I think it's slide 34. Just the first page, please. Thank
16 you.

17 Q. (BY MR. HEALY) Do you recall Mr. Stevenson telling you
18 -- asking you questions about certain claim positions that
19 Ericsson had sent in December of 2019?

20 A. Yes.

21 Q. Does this document look like those positions?

22 A. Yes, I think so, yes.

23 Q. And do you recall Mr. Stevenson criticizing KPN for not
24 responding to those positions?

25 A. Yes.

1 MR. HEALY: If we could go to page 10 of this
2 document.

3 Q. (BY MR. HEALY) Is this the -- well, let me ask you the
4 question.

5 EP 495, how does that relate to the '089 Patent?

6 A. That is the European family member of the '089 Patent.

7 Q. So for the entirety of the '089 Patent family, is this
8 what Ericsson sent you?

9 A. Yes.

10 Q. What claim chart was this responding to?

11 A. To the claim chart I have sent in January 2017.

12 Q. So roughly three years earlier?

13 A. Yes.

14 Q. And did anything else in this document contain any
15 positions from Ericsson about the '089 Patent or any patent
16 in that family?

17 A. No, this was it.

18 Q. A single page?

19 A. Yes.

20 Q. And the first position that Ericsson says here is that
21 the patent is not essential. Do you see that?

22 A. Yes.

23 Q. Okay. Do you understand that Ericsson is asserting a
24 FRAND defense in this case?

25 A. Yes.

1 Q. Can a patent be subject to FRAND if it's not essential?

2 A. No.

3 Q. So one of those two positions is inconsistent?

4 A. That's right.

5 Q. One of them is wrong?

6 A. Yes.

7 Q. Okay. And then Mr. Stevenson pointed out Ericsson had
8 taken the position that the '089 Patent family was invalid.

9 Do you recall that?

10 A. Yes.

11 Q. And is this the entirety what Ericsson said about
12 invalidity that Mr. Stevenson pointed to?

13 A. Yes.

14 Q. And he pointed to two references. Is that right?

15 A. That's right.

16 Q. Is Ericsson asserting either one of these references in
17 this case?

18 A. No.

19 Q. In your experience -- well, strike that. Let's move on.

20 MR. HEALY: Can we bring up PX 589, Mr. Boles?

21 Q. (BY MR. HEALY) Do you recall earlier today that
22 Mr. Stevenson asked questions and made -- asked you questions
23 about Ericsson's claim charts that it had sent to KPN?

24 A. Can you repeat the question?

25 Q. Sure. Do you recall Mr. Stevenson asking you questions

1 about claim charts that Ericsson had prepared for its patents
2 and sent to KPN?

3 A. Yes. He was referring to an email where they were only
4 announced, but in the end they have sent them.

5 Q. Okay.

6 MR. HEALY: And if we could go to page 2 of this
7 document.

8 Q. (BY MR. HEALY) Those claim charts that Ericsson sent --

9 MR. HEALY: I'm sorry. This is 589. At page 1.
10 I'm sorry, Mr. Boles.

11 Q. (BY MR. HEALY) And this is the document where
12 Mr. Dannelind announced he was going to do that?

13 A. Yes.

14 Q. Okay. Did KPN respond to those claim charts?

15 A. When we received them, we analyzed them and then
16 responded, yes.

17 Q. Okay.

18 MR. HEALY: Could we go to I believe it's 589 at
19 page 2? I'm sorry, Mr. Boles. It's my mistake--246; PX 246.
20 And if we could go to page 2.

21 Q. (BY MR. HEALY) Now, do you see paragraph 3 here?

22 A. Yes.

23 Q. Okay. And this is an email from KPN to Ericsson?

24 A. Yes.

25 Q. Okay. And Mr. Wuyts says, "As I had already anticipated

1 in my memo of December 13th last." Do you see that?

2 A. Yes.

3 Q. So that's referring to the first time that KPN had
4 responded to Ericsson's new assertions.

5 A. Yes.

6 Q. Okay. And then the remainder of this paragraph sets
7 forth KPN's position about each of those patents that Ericsson
8 had identified as being infringed by KPN. Correct?

9 A. Yes, that's correct.

10 Q. Did KPN take four years to send this response?

11 A. No.

12 Q. And let's just take a look at some of these examples.

13 Mr. Stevenson pointed you to a comment by Mr. Wuyts about
14 notifying the EPO. Do you recall that?

15 A. The European commission, yes.

16 Q. And do you see No. 2 here?

17 A. Yes.

18 Q. And what is Mr. Wuyts saying about that patent?

19 A. In the package was one patent that was already revoked by
20 the Board of Appeal of the European Patent Organization.

21 Q. Is that a reason to notify the EPC if someone's asserting
22 the patent they've already been revoked?

23 A. No.

24 Q. And the second or the third paragraph says, "You sent us
25 the 25 and 1th patent that has the exactly the same claims

1 as" --

2 THE COURT: Slow down, please, counsel.

3 MR. HEALY: You're right. I apologize, Your Honor.

4 Q. (BY MR. HEALY) Do you see that highlighted text, Madame?

5 A. Yes.

6 Q. This was pointing out that another patent also had claims
7 that had already been revoked?

8 A. Well, after we complained about the 25th, they sent an
9 additional patent instead of the revoked patent, and it's
10 exactly the same claims.

11 Q. So KPN analyzed that patent, too?

12 A. Yes, of course.

13 Q. Did KPN take four years to do that analysis?

14 A. No.

15 Q. And you sent a response in writing as soon as you could?

16 A. Yes.

17 Q. And this is part of that response?

18 A. Yes.

19 Q. And then if you look down to the paragraph ending in (v),
20 you see that text before the black line?

21 A. Yes.

22 Q. And what is KPN saying here?

23 A. Well, for all the patents Ericsson provided to us, we
24 checked internally within KPN which product we used to perform
25 that patent, and it turned out that a lot of the equipment we

1 used there is from Huawei, Nokia, and Ericsson itself. And we
2 checked with Huawei, Nokia, and Ericsson-NL and they are all
3 licensed under Ericsson Sweden's patents.

4 Q. So of the 26 patents that Ericsson sent you, it was
5 accusing you of infringing some by using Ericsson's own
6 products?

7 A. Yes.

8 Q. And the rest were Huawei and Nokia products?

9 A. The majority. There were a few examples.

10 Q. Fair.

11 A. Exceptions.

12 Q. And in this time frame, since receiving their
13 notification in December, you had already spoken to the
14 suppliers?

15 A. Yes, immediately we have to do that, yes.

16 Q. And they -- immediately?

17 A. Immediately, yes.

18 Q. And they confirmed that they had licenses to Ericsson's
19 patents?

20 A. Yes.

21 Q. But Ericsson hadn't told you that.

22 A. No.

23 Q. And did this analysis, this outreach to these suppliers,
24 take four years?

25 A. No.

1 Q. I want to touch on one last thing that Mr. Stevenson
2 brought up.

3 MR. HEALY: IF we could bring up DX 396. If we
4 could go to page -- let me stop here.

5 Q. (BY MR. HEALY) Do you recognize this document as one
6 Mr. Stevenson discussed with you?

7 A. We.

8 MR. HEALY: DO go to page 15, Mr. Boles.

9 Q. (BY MR. HEALY) Do you recall Mr. Stevenson going through
10 with this page with you?

11 A. Yes.

12 MR. HEALY: If we can go to page 11.

13 Q. (BY MR. HEALY) Mr. Stevenson didn't show you this and
14 didn't show the jury this page. Right?

15 A. No. I refer to it, but he didn't show it, no.

16 Q. And this -- what does this page show?

17 A. This page shows for every negotiation route we had with
18 Ericsson, which patents we discussed with them, and then the
19 patents between brackets we acknowledged that they were not
20 used by Ericsson.

21 Q. And so this slide shows how KPN came up with that
22 calculation on page 15 that Mr. Stevenson showed you?

23 A. Yes.

24 Q. Okay. And the values on page 15, do those reflect KPN's
25 belief about how much each patent is actually worth?

1 A. No.

2 Q. How is this calculation done: Let's -- for example, 11
3 on the right-hand column.

4 A. Yes.

5 Q. How is that calculation performed?

6 A. Well, just counting the patents, we provided Ericsson
7 over the course from 2017 to the end of 2020, and then, like I
8 said, the patents between brackets we gave Ericsson
9 credibility. We said, Okay, you probably are not using that,
10 so we did not count them. And we counted the patents of which
11 we thought Ericsson was using them, and then that ended up
12 with the 11.

13 Q. So in 2013, for example, KPN just counted up the patents
14 that it had talked about with Ericsson and then subtracted the
15 ones that Ericsson said, We don't use.

16 A. Yes.

17 Q. And if you look on the 2020, you've got the EP 495 there.
18 Do you see that, second from the top?

19 A. Yes.

20 Q. Not in brackets?

21 A. Not in brackets, no.

22 Q. But let's focus on 2013. So all you did was add up the
23 number of patents, subtract the patents that Ericsson said it
24 didn't use.

25 A. Yes, that's right.

1 MR. HEALY: And now if we can go to slide 15,
2 Mr. Boles.

3 Q. (BY MR. HEALY) So when we're looking at number of
4 patents in use here, that's all that calculation is. Is
5 that right?

6 A. Yes, that's right.

7 Q. Okay. The GVA per patent is simply taking the amount of
8 money in vouchers and dividing it by the number of patents
9 that you had sent a claim chart on.

10 A. Yes.

11 Q. That's it?

12 A. That's it.

13 Q. Does that reflect the actual value in KPN's perspective
14 of that patent?

15 A. No, not at all.

16 Q. Does it reflect the value of the cross license to
17 Ericsson's patent portfolio?

18 A. No.

19 Q. Does it reflect the full .3 percent value of KPN's
20 patents that you have talked about?

21 A. No, not at all.

22 MR. HEALY: I have no further questions, Your Honor.

23 THE COURT: You pass the witness?

24 MR. HEALY: Yes, sir.

25 THE COURT: Is there further cross, Mr. Stevenson?

1 MR. STEVENSON: Yes.

2 THE COURT: Proceed with additional cross
3 examination.

4 MR. STEVENSON: Will you please pull up PX 605 at
5 page 7?

6 RECROSS EXAMINATION

7 BY MR. STEVENSON:

8 Q. Ms. Gerritse, I thought I heard you on the redirect
9 examination told the jury that when Ericsson wanted to send
10 you its patents to get valued, that it was accusing you of
11 infringement based on your use of Ericsson equipment.

12 A. Yes.

13 Q. Well, that's not what Ericsson told you.

14 A. Well, like I said to Mr. Healy, the email you showed me
15 was just an announcement that they would send the patents, but
16 they didn't yet, and when we finally received them, we
17 analyzed them and then some of the patents are used -- applied
18 by KPN through Ericsson equipment. So I cannot -- and then
19 contacted Ericsson in the Netherlands, which is our business
20 contract in Ericsson, and they confirmed that they have a
21 license from Ericsson IPR.

22 MR. STEVENSON: Will you scroll down, please,
23 Mr. Moreno? Continue to scroll down. Continue. There it is.

24 Q. (BY MR. STEVENSON) I'm talking and limiting my
25 questions, Ms. Gerritse, to whether Ericsson was accusing KPN

1 of infringing Ericsson patents by use of Ericsson equipment.

2 My question is specifically limited to that.

3 And didn't Ericsson tell you when it offered to send you
4 and told you it was going to send you the patents of Ericsson,
5 on the last line, "KPN is obviously licensed under Ericsson's
6 patents for products purchased from Ericsson."

7 A. Yes, they said so.

8 Q. And if you're licensed and the person who owns the patent
9 says you're licensed, then you don't infringe that patent.

10 Right?

11 A. But you do not have to send the patents for analysis.

12 Q. Well, that's the thing, Ms. Gerritse. You buy equipment
13 from a lot of other companies, don't you?

14 A. Yes, we do.

15 Q. And you don't know that all those companies are licensed
16 from Ericsson as well, do you?

17 A. Well, from the most important suppliers we know -- we are
18 aware of licenses and cross licenses in the industry.

19 Q. You don't know if those cover all of Ericsson's patents.

20 A. Not all of Ericsson's patents, no.

21 Q. Right.

22 A. That's true.

23 Q. And you don't know if those licenses have certain
24 restrictions in them, do you?

25 A. No, that's right.

1 Q. But if you tell Ericsson, Don't even send us your patents
2 because if you do we'll sue your customer, then you don't have
3 a way of starting a dialogue to find out, do you?

4 A. Can you repeat that?

5 Q. I'll withdraw.

6 A. Okay.

7 Q. I also heard you talk about a privacy issue --

8 A. Yes.

9 Q. -- in the European commission or the European Union.

10 Now, you're aware, aren't you, that the 3GPP standard the
11 interoperability standard --

12 A. Yes.

13 Q. -- requires the customer consent to activate this MDT
14 tracking function?

15 A. I'm not aware of that.

16 Q. Okay. Well, let's look at PX 658.

17 A. Do you bring it on the screen?

18 Q. I'll put it on screen for you.

19 MR. STEVENSON: And if you'll go to page 106, and
20 that's 106 at the top. Page 106, please. One more. Thank
21 you.

22 Q. (BY MR. STEVENSON) You know what the 3GPP standard is,
23 don't you?

24 A. I know what 3GPP is, yes.

25 Q. Right. And you understand this is a standard that isn't

1 just applicable in Europe or -- this is the worldwide standard
2 that is being used for the MDT function.

3 A. The worldwide is what you said?

4 Q. 3GPP, yes.

5 A. Yes.

6 Q. You understand that's an umbrella organization and this
7 standard is essentially now the worldwide standard, not just
8 Europe?

9 A. Yes, that is right.

10 Q. Okay. And it says, doesn't it, "In the case of
11 area-based MDT, getting user consent is required before
12 activating the MDT functionality because of privacy and legal
13 obligations."

14 A. I know that it says that, yes. I see that.

15 Q. So if you're a carrier anywhere in the world and you want
16 to do this, you have to get customer consent. Correct?

17 MR. HEALY: Objection, Your Honor.

18 THE COURT: Just a moment. What's your objection?

19 MR. HEALY: Calling for expert testimony. She's not
20 an expert.

21 MR. STEVENSON: Your Honor, I'm following up on a
22 statement that was made in redirect examination that the
23 reason KPN has not turned this feature on has to do with
24 privacy issues that are unique to Europe, and I'm trying to
25 show that is not the case.

1 MR. HEALY: May I respond, Your Honor?

2 THE COURT: Please.

3 MR. HEALY: Should I do it outside the hearing of
4 the jury?

5 MR. HEALY: Approach the bench.

6 (The following was had outside the hearing of the
7 jury.)

8 MR. HEALY: What the witness testified before is
9 GDPR. That's not this. This is --

10 THE COURT: Speak up just a little.

11 MR. HEALY: What the witness testified about before
12 was GDPR, which is a legal statutory requirement in Europe.
13 This is not that. This is a technical standard. I haven't
14 objected to him saying, this is what the standard says; can
15 you read it? She already said she has never seen it, and now
16 he is asking her to apply it. Again, this is a question for
17 his expert witness, not our fact witness, who doesn't have any
18 idea what this document is or what it is about.

19 THE COURT: What's your response, Mr. Stevenson?

20 MR. STEVENSON: The only point I'm trying to make
21 is --

22 THE COURT: I know what you're trying --

23 MR. STEVENSON: -- everybody needs to get consent.

24 THE COURT: I know the point you're trying to make,
25 but are you trying to do it through a technical document that

1 she said she doesn't know anything about?

2 MR. STEVENSON: She's the corporate representative.
3 She sent the claim chart. Her claim chart that she sent us
4 reads all over the 3GPP standard. That's what they use. And
5 now she's saying to the jury, Well, we didn't get consent, but
6 that's just for Europe; that has nothing to do with the U.S.,
7 that's a misimpression that she's created, and I want to kill
8 that misimpression now because you have to get consent in the
9 U.S.; there is no exception.

10 MR. HEALY: Again, that's an issue for your expert.
11 This is -- she testified to GDPR, not this. The 3GPP standard
12 is thousands of documents, no reference, no connection to this
13 document that you've shown. She's testified that she just
14 forwarded claim charts that she didn't prepare. She has no
15 idea about this document. He is now asking her to analyze it
16 because he doesn't want to have his expert do it, or he can't
17 have the expert do it. I don't know, but it's a question for
18 his expert if it's in his report. It's not a question to ask
19 a fact witness who already said she had no idea what this
20 document is about.

21 THE COURT: All right. You need to restate your
22 question, and then once he's restated it if you want to reurge
23 your objection I'll hear it at that time. Just start it over.

24 MR. HEALY: Thank you, Your Honor.

25 (The following was had in the presence and hearing

1 of the jury.)

2 THE COURT: All right. Restate your question,
3 Mr. Stevenson.

4 Q. (BY MR. STEVENSON) Ms. Gerritse, this is a worldwide
5 standard, and what we've highlighted is what the standard
6 requires. Correct?

7 A. Well, I cannot agree with that. I do not know which
8 standard it is, and I am aware on a high level about 3GPP
9 standards. There are parts of the standards that are not
10 mandatory so I cannot answer that.

11 Q. Let me go onto the next topic. You talked about and your
12 counsel showed one slide which was a response of Ericsson to
13 the '089 Patent, and you said that was the entirety of the
14 analysis you got from Ericsson. Do you remember that?

15 A. At that moment, yes.

16 MR. STEVENSON: All right. Let's look at DX 580,
17 please.

18 Q. (BY MR. STEVENSON) Do you recall that Ericsson sent you
19 in February of 2020 a slideshow -- a slide deck on your claim
20 charts?

21 A. Yes, but that was later.

22 Q. That's in addition to what you showed the jury and said
23 this is the entirety of the analysis?

24 A. That was the entirety of the analysis at that moment.

25 Q. Well, the truth is Ericsson followed up with a lot more

1 detail, didn't it?

2 A. That was later on, yes.

3 Q. Okay. So --

4 A. At that moment it was the entirety.

5 Q. At that moment it was the entirety, but within the
6 context of the negotiations it was not the entirety. You
7 received a lot more analysis from Ericsson, didn't you?

8 A. Yes.

9 Q. Let's look at it.

10 MR. STEVENSON: Let's go to slide 12, please.

11 Q. (BY MR. STEVENSON) This is the European equivalent of
12 the '089 Patent drive testing. Correct?

13 A. Yes. That's right.

14 Q. And we gave you our position that it's not essential.
15 Correct?

16 A. Yes.

17 MR. STEVENSON: Go to the next slide, please.

18 Q. (BY MR. STEVENSON) We then went on in detail about our
19 non-essential argument, didn't we?

20 A. Yes.

21 Q. We made the point to you that the plurality of terminals
22 is not required by the standard to be capable of communicating
23 with a first and second wireless access network, didn't we?

24 A. I am not a technical expert. I'm really not able to do
25 more than read what I see on the screen. It's hard to

1 interpret it.

2 Q. Is it your testimony that as the European patent attorney
3 for KPN who managed and coordinated the prosecution of this
4 patent, who talked with the inventors, who sent us the claim
5 charts, and who participated in the negotiations and the
6 technical discussions and presentations with Ericsson, you
7 don't know what any of this refers to or means?

8 A. Yes.

9 Q. Okay. Let's continue and look -- we'll just look at the
10 pages and see how many there are and we'll count them.

11 MR. STEVENSON: What's the next page, please?

12 Q. (BY MR. STEVENSON) Here we go into more detail about the
13 non-essentiality argument, isn't it?

14 A. Yes.

15 MR. STEVENSON: Okay. Go to the next page.

16 Q. (BY MR. STEVENSON) Here we say it's not used, don't we?

17 A. Yes.

18 MR. STEVENSON: Will you blow up the red circle,
19 please?

20 Q. (BY MR. STEVENSON) And we tell you -- right here we
21 mention user consent, don't we?

22 A. Where can I see this?

23 Q. Last sentence in the red circled area.

24 A. I don't know where -- I mean, it's clearly copies from a
25 page from another document. I have no idea what I'm looking

1 at.

2 Q. Well, Ericsson presented this to you, didn't it?

3 A. Yes, they did, but you are now zooming in out of context.

4 Q. Were you the lead negotiator for KPN when it came to
5 Ericsson and having the negotiations over patents?

6 A. No.

7 Q. Who is the lead negotiator?

8 A. That's my manager Doctor Wuyts.

9 Q. And you're telling us that of all the technical back and
10 forth that you had with Ericsson, all the disagreements over
11 patents, you can't interpret anything on this document that
12 Ericsson sent you or even understand any of their
13 non-infringement arguments they made. Is that what your
14 testimony is?

15 A. That's my testimony, yes. For this I always consult with
16 our technical expert.

17 MR. STEVENSON: Pass the witness.

18 THE COURT: Redirect?

19 MR. HEALY: No, Your Honor.

20 THE COURT: All right. You may step down,
21 Ms. Gerritse. You may step down.

22 Well, ladies and gentlemen, I told you we might go to
23 6:00 it's six minutes after 6:00, so welcome to jury trials in
24 the Eastern District of Texas.

25 We're going to recess for the day here. I'm going to ask

1 you to take your notebooks with you as you leave the courtroom
2 and go into the jury room. Leave them on the table closed
3 there. They'll be there in the morning for you.

4 I'm going to remind you of all the instructions I've
5 given you about your conduct during the trial, particularly
6 not to discuss the case with anyone in any way. And I'll
7 remind you that when you get home, if whoever's there asks
8 about today, you really just need to blame it on me and say,
9 That very stern federal judge told me not to answer that
10 question. So don't even try to answer the question about what
11 happened in court today because you'll almost assuredly
12 violate my instruction if you do.

13 Please be assembled in the jury room so that we can start
14 at 8:30 in the morning. That's my goal. There will be some
15 mornings I will be ready before 8:30, there will be some
16 mornings it may a minute or two after, but we are going do try
17 hard to start each day at 8:30.

18 Please travel safely to your homes, follow all the
19 instructions I've given you, travel safely back in the
20 morning, and we will see you tomorrow morning for the next day
21 of trail in this case.

22 With those instructions, the jury's excused for the
23 evening.

24 (Whereupon, the jury left the courtroom.)

25 THE COURT: Be seated, please.

1 Counsel, the Plaintiff has used 1 and 35 minutes today,
2 the Defendants used 1 and 20 minutes today. There are a few
3 odd seconds on each of those, but I'm just going to give it to
4 you through the minutes used.

5 Let me remind you, as we discussed earlier, that I'll
6 expect a representative from each side to be available before
7 I bring the jury in in the morning to read into the record
8 those items from the list of pre-admitted exhibits that have
9 been used during today's portion of the trial. If there's any
10 question about that, you need to meet and confer with each
11 other well in advance of tomorrow morning so that that's
12 completely resolved.

13 I'll also remind you about your ongoing obligation to
14 meet and confer overnight regarding potential disputes. If
15 there are any, I need to hear about them through
16 communications with my staff this evening, and then if they're
17 not resolved thereafter, I need a three-ring binder produced
18 by 7:00 tomorrow morning at chambers so that I can be prepared
19 to meet with you at 7:30. It would not hurt my feelings at
20 all if you don't have any, but I would not bet the farm that
21 that will be the case. So please follow my instructions with
22 regard to the meet and confer process carefully and
23 thoroughly.

24 Now, are there any questions before we recess for the
25 evening from either side?

1 MR. STEVENSON: None from Ericsson.

2 MS. WHITE: None for the Plaintiff. Thank you.

3 THE COURT: All right. And I assume the Plaintiff's
4 going to proceed with Doctor Mangione-Smith as their witness
5 tomorrow.

6 MS. WHITE: Yes, Your Honor.

7 THE COURT: All right. Have a good evening,
8 counsel.

9 We stand in recess until tomorrow morning.

10 (The proceedings were concluded at 6:10 p.m.)

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1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8
9 S/Shawn McRoberts 08/22/2022

10 _____DATE_____
11 SHAWN McROBERTS, RMR, CRR
12 FEDERAL OFFICIAL COURT REPORTER
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Shawn M. McRoberts, RMR, CRR
Federal Official Court Reporter